

2018, or the Queens Interrogation on August 20, 2018. The defendant concedes that he “did not specifically cite his desire to have counsel present during any questioning.” (Def. Mot. at 9).

On August 19, 2018, at the Arraignment in Kings County Criminal Court, counsel for the defendant stated, in relevant part, “I am invoking [the defendant’s] right to remain silent, [and] his right to have an attorney present for any identification procedures.” (Def. Mot., Exhibit A, Transcript of Arraignment at 6-7). Counsel’s statements were insufficient to invoke the defendant’s Fifth Amendment right to counsel. The Second Circuit in Medunjanin emphasized that the Fifth Amendment right to counsel must be affirmatively invoked by the suspect and not his attorney. See Medunjanin, 752 F.3d at 587.

Moreover, the defendant’s opportunity to invoke his Fifth Amendment right to counsel did not arise until the context of custodial interrogation arose, i.e., when the Queens Interrogation commenced on the following day. Counsel’s attempt to invoke the defendant’s Fifth Amendment right to counsel was done in anticipation of future interrogation of the defendant, but the Second Circuit has clearly held that a suspect may not invoke his Fifth Amendment right to counsel anticipatorily. See Medunjanin, 752 F.3d at 587. Accordingly, attorney Cassidy Lane’s statements at the Arraignment do not qualify as an invocation of the defendant’s Fifth Amendment right to counsel.

While the defendant concedes that he never asked for counsel during either the Brooklyn Interrogation or the Queens Interrogation, the defendant relies on his refusal to submit to questioning to argue that there was an implied desire to have counsel present and that further questioning of the defendant was improper. (Def. Mot. at 9). As the courts have made clear, an invocation of the Fifth Amendment right to counsel must be unequivocal. See e.g., Davis v. United States, 512 U.S. 452, 459 (1994). An implied invocation of the right does not exist, and, as discussed more fully below, a refusal to answer questions is legally distinguishable from a request for counsel.

The defendant cites United States v. Quiroz, 13 F.3d 505 (2d Cir. 1993), to support the argument that by refusing to answer questions, the defendant impliedly invoked his right to counsel. (Def. Mot. at 9). The defendant misinterprets Quiroz, which addresses whether Quiroz’s statement, “Before I sign anything, I want to speak to my attorney,” qualified as an unequivocal invocation of the right to counsel. Quiroz, 13 F.3d at 509. The Second Circuit held that such a statement did indeed qualify as an unequivocal invocation. Id. at 512. In the instant case, however, there was never any mention of an attorney, and Quiroz is inapplicable. The defendant’s refusal to answer questions after being advised of his Miranda rights was nothing more than an invocation of the defendant’s right to remain silent; it was not an invocation of his Fifth Amendment right to counsel.

### **III. The Defendant's Invocation of His Right to Remain Silent During the Brooklyn Interrogation Was Honored**

#### **A. Applicable Law**

Similar to one's Fifth Amendment right to counsel, invocation of one's right to remain silent must be unequivocal. Berghuis v. Thompson, 560 U.S. 370, 381-82 (2010). However, a suspect's invocation of the right to remain silent is treated differently from a suspect's invocation of the Fifth Amendment right to counsel, and a suspect can invoke the right to remain silent without invoking the Fifth Amendment right to counsel. See Anderson v. Smith, 751 F.2d 96, 100-101 (2d Cir. 1984).

When a suspect invokes the Fifth Amendment right to counsel, the suspect may not be "subject[ed] to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." Edwards v. Arizona, 451 U.S. 477 (1981). On the other hand, if a suspect has only invoked the right to remain silent, the police are not forever precluded from resuming questioning. They must, however, "scrupulously honor" the suspect's wishes by, for example, waiting a significant period of time, administering a fresh set of Miranda warnings, and limiting the renewed questioning to a different subject matter. Michigan v. Mosley, 423 U.S. 96, 104, 106 (1975).

To determine whether a suspect's right to remain silent has been scrupulously honored, a court must consider the circumstances of the post-invocation interrogation, including whether the defendant was initially advised of his Miranda rights, whether questioning immediately ceased when the defendant invoked his rights, the duration of time that passed before questioning resumed, and whether there was a change in the location of the interrogation or the identity of the interrogator. Mosley, 423 U.S. at 104. Where the police fail to honor a decision of a person in custody to remain silent, either by refusing to discontinue the interrogation or by persisting in repeated efforts to wear down the suspect's resistance and convince the suspect to change his mind, the statement should be suppressed. Mosley, 423 U.S. at 105.

A suspect's response of "no" to the question, "Having these [Miranda] rights in mind do you wish to talk to [the police] now?" can only be viewed as an invocation of the right to remain silent, absent a specific request for counsel. Anderson v. Smith, 751 F.2d 96 at 100.

### **B. Analysis**

The defendant invoked his right to remain silent by refusing to answer questions at the conclusion of the Brooklyn Interrogation. Officer Walsh asked the defendant, "Now that I have advised you of your [Miranda] rights, are you willing to answer any questions?" The defendant responded, "Not really, but I mean, ask them, ask them." When Officer Walsh informed the defendant that he needed to

respond with a “yes” or “no,” the defendant unambiguously answered “no.” At that point, Officer Walsh ceased her questioning of the defendant and allowed him to remain in the interrogation room to finish his cigarette. Officer Walsh “scrupulously honored” the defendant’s invocation of his right to remain silent and proceeded with the arrest processing, which led to the defendant’s Arraignment in Kings County Criminal Court.

The defendant’s invocation of his right to remain silent at the Brooklyn Interrogation did not preclude law enforcement from resuming questioning of the defendant at the 102<sup>nd</sup> Precinct on August 20, 2018 and conducting the Queens Interrogation. Nearly 24 hours had lapsed since the Brooklyn Interrogation before the Queens Interrogation began. At the beginning of the Queens Interrogation, the defendant was advised of his Miranda rights anew by a different member of law enforcement at a different police precinct. There is no indication or allegation by the defendant that the Queens Interrogation was conducted with the purpose of wearing down the defendant’s resistance or persuading the defendant to change his mind about remaining silent. See Mosley, 423 U.S. at 105.

In sum, the defendant’s right to remain silent was scrupulously honored by the NYPD, and there was no constitutional violation by attempting to interview the defendant about the robbery of the T-Mobile store after he had been charged with the violations of New York’s Vehicle and Traffic Laws.

#### **IV. The Defendant Knowingly and Intelligently Waived His Miranda Rights at the Start of the Queens Interrogation and Made a Voluntary Statement**

##### **A. Applicable Law**

To be valid, a waiver of Miranda rights must be made voluntarily, knowingly and intelligently. Moran v. Burbine, 475 U.S. 412, 421 (1986). To establish that a defendant validly waived his Miranda rights, the government must prove by a preponderance of the evidence “(1) that the relinquishment of the defendant’s rights was voluntary, and (2) that the defendant had full awareness of the right being waived and of the consequences of waiving the right.” Id. A court must consider the totality of the circumstances surrounding the interrogation to determine with a defendant voluntarily, knowingly and intelligently waived his Miranda rights. Id. The use of physical and psychological pressure, intimidation, coercion or deception by the police are factors to be considered. See id.

An express waiver of Miranda rights does not necessarily establish that a defendant’s subsequent statements are voluntary. See United States v. Taylor, 745 F.3d 15, 23 (2d Cir. 2014). In Taylor, the Second Circuit held that a statement by a defendant who was being treated in a hospital for a drug overdose and slipping in and out of consciousness during questioning was involuntary notwithstanding a written Miranda waiver. Id. In contrast, in United States v. O’Brien, the Second Circuit held that a statement by a defendant who claimed to be under the influence

of a controlled substance, but who otherwise demonstrated no signs of intoxication and did not request medical attention, was voluntary after an express waiver of his Miranda rights. United States v. O'Brien, 926 F.3d 57, 74 (2d Cir. 2019).

### **B. Analysis**

The defendant's waiver of his Miranda rights during the Queens Interrogation was lawfully obtained and is fully captured on a videotaped recording. The defendant was advised of his Miranda rights—for a second time within a twenty-four-hour window—and expressly stated that he was willing to answer questions. Just one day earlier, he had told Detective Waters that he did not wish to answer any questions and there was no additional questioning conducted by Detective Waters thereafter. Presumably, the defendant had learned from his prior experience and understood that if he did not wish to answer questions, he needed only to say so. Instead of invoking his right to remain silent, he specifically said that he was willing to answer questions after being advised of his Miranda rights and stating that he understood them.

A review of the questions and answers that followed the defendant's waiver demonstrates that the defendant was lucid, that he understood the questions being asked, and that he had the option to refuse to answer specific questions if he chose to. (See Exhibit B). For example, when Detective Waters asked the defendant where

he had obtained the gun that was used during the robbery, the defendant said, “I don’t want to speak about that.”

At no point during the Queens Interrogation did Detective Waters threaten or otherwise coerce the defendant to answer questions. No physical or psychological pressure was applied to the defendant. The defendant states in his motion that he was “physically and mentally exhausted” (see Def. Mot., Exhibit B), but that fact alone, if true, does not render the defendant’s statement involuntary. Nothing about the circumstances of the Queens Interrogation demonstrates a lack of understanding by the defendant or any attempt, intentional or otherwise, by law enforcement to overcome the defendant’s will.

The government agrees with the defendant that the material facts relating to the circumstances in which the defendant’s statements were made are not in dispute. (See Def. Mot. at 8). The government submits that the undisputed facts establish that the defendant was properly advised of his Miranda rights, that the defendant waived those rights, and that the defendant subsequently gave a voluntary statement.

### CONCLUSION

For the foregoing reasons, the government respectfully submits that the defendant’s motion to dismiss is without merit and that in the absence of materially disputed facts, the defendant’s motion should be denied in its entirety, without an evidentiary hearing.



**Applicant Details**

First Name **Sophia**  
 Last Name **Stefanovic**  
 Citizenship Status **U. S. Citizen**  
 Email Address [sns382@nyu.edu](mailto:sns382@nyu.edu)  
 Address

**Address**  
**Street**  
**46 Lispenard Street**  
**City**  
**New York**  
**State/Territory**  
**New York**  
**Zip**  
**10013**  
**Country**  
**United States**

Contact Phone Number **6463692259**

**Applicant Education**

BA/BS From **Brown University**  
 Date of BA/BS **May 2014**  
 JD/LLB From **New York University School of Law**  
<https://www.law.nyu.edu>  
 Date of JD/LLB **May 21, 2020**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Journal of International Law and Politics**  
 Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/  
 Externships **No**

Post-graduate Judicial Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Milgram, Anne  
anne.milgram@nyu.edu  
(212) 992-8832

Cho, James  
james.cho@usdoj.gov  
718-254-6519

Mailloux, Matthew  
matthew.mailloux@usdoj.gov  
718-254-6176

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**SOPHIA NITZAN STEFANOVIĆ**

46 Lispenard Street, Apartment 3 W • New York, NY 10013 • (646) 369-2259 • sns382@nyu.edu

March 2, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Dear Judge Liman:

I am writing to apply for a clerkship in your chambers starting in summer 2024. I graduated from New York University School of Law in May 2020, and I am currently a second-year associate practicing international arbitration at White & Case LLP, which I joined in January 2021. I will be clerking for the Honorable Robert Lehrburger for a year starting in March 2023.

Attached please find my resume, law school transcript and addendum, undergraduate transcript, and writing sample. The following people are submitting letters of recommendation separately:

- Professor Anne Milgram, New York University School of Law, anne.milgram@nyu.edu, 212-992-8832
- The Honorable James Cho, United States District Court for the Eastern District of New York, james\_cho@nyed.uscourts.gov, 718-613-2110
- Matthew Mailloux, United States Attorney's Office for the Eastern District of New York, matthew.mailloux@usdoj.gov, 718-254-6176

As my resume demonstrates, I have research, writing, and editing experience that I would bring to a clerkship. In law school, I interned at the United States Attorney's Office for the Eastern District of New York in both the Civil and Criminal Divisions, where I drafted memoranda on evidentiary issues and a Motion to Dismiss. As a research assistant for Professor Anne Milgram, I conducted research and wrote memoranda on how data can make the criminal justice system more efficient. I was also the Managing Editor of the *Journal of International Law and Politics*, and, in that capacity, I selected and edited articles and served as the point of contact for authors through the editing and publication process. If there are any other materials or information that would be helpful to you, please let me know. Thank you for your time and consideration.

Respectfully,

Sophia Nitzan Stefanović

**SOPHIA NITZAN STEFANOVIĆ**

46 Lispenard Street, Apartment 3 W • New York, NY 10013 • (646) 369-2259 • sns382@nyu.edu

**EDUCATION**

**NEW YORK UNIVERSITY SCHOOL OF LAW**, New York, NY

J.D., May 2020

Honors: *Journal of International Law and Politics*, Managing Editor  
International Law and Human Rights Fellow, White & Case/Orison Marden Fellow

Activities: Professor Anne Milgram, Research Assistant  
Judge Gerald Lebovits, Graduate Lawyering Teaching Assistant  
International Law Society, Co-President  
International Refugee Assistance Project, Student Advocate

**BROWN UNIVERSITY**, Providence, RI

B.A. in German Studies, May 2014

Honors: Adolph Conrad Ely Premium for Excellence in German Studies  
Delta Phi Alpha National Honor Society for German Studies

Activities: BRYTE (Brown Refugee Youth Tutoring and Enrichment), Tutor  
Brown Women's Club Soccer, Member

Study Abroad: New York University Berlin, Berlin, Germany, September-December 2012

**EXPERIENCE**

**THE HON. ROBERT W. LEHRBURGER, U.S. DISTRICT COURT, S.D.N.Y.**, New York, NY

*Judicial Clerk*, Anticipated March 2023-March 2024

**WHITE & CASE LLP**, New York, NY

*Associate*, May 2021-Present; *Law Clerk*, January 2021-May 2021; *Summer Law Clerk*, May 2019-July 2019  
Conduct research, write memoranda, draft briefs, and represent clients at hearings before tribunals for international commercial arbitrations. Wrote a brief on behalf of a veteran to the Board of Veterans' Appeals claiming disability benefits for a pro bono matter.

**UNITED STATES ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF NEW YORK**, New York, NY

*Civil Division, Intern*, January 2020-May 2020; *Criminal Division, Intern*, September 2019-December 2019

In Criminal Division, conducted research and wrote memoranda on evidentiary issues and on conspiracy in terrorism cases. In Civil Division, wrote a Motion to Dismiss a *pro se* plaintiff's suit challenging his student loan debts.

**SOUTHERN AFRICA LITIGATION CENTRE**, Johannesburg, South Africa

*Intern*, May 2018-August 2018

Conducted research and wrote memoranda on legal and investigative strategies to challenge governments and corporations committing constitutional and human rights violations in southern Africa.

**NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE**, New York, NY

*Trial Preparation Assistant*, January 2016-June 2017

Second sat three-week attempted murder trial with the most senior Assistant District Attorney in the bureau. Drafted legal documents, including subpoenas, court orders, and motions, and obtained and reviewed evidence.

**INTERNATIONAL CRIMINAL COURT**, The Hague, The Netherlands

*Office of the Prosecutor, Investigation Division, Operations Support Unit, Intern*, April 2015-October 2015

Wrote security risk assessments to advise the operations of investigators and the safety of witnesses in the field.

**ADDITIONAL INFORMATION**

Member of the New York State Bar. Native proficiency in Portuguese. Citizen of the United States, Brazil, and Germany. Member of Young Visionaries of Planned Parenthood of Greater New York. Former member of USA Boxing (boxed in front of 800 people to raise money for veterans and at-risk kids). PADI Certified Scuba Diver.

## TRANSCRIPT ADDENDUM FOR NYU SCHOOL OF LAW JD & LLM STUDENTS

*I certify that this is a true and accurate representation of my NYU School of Law transcript.*

### Grading Guidelines

The following guidelines represent NYU School of Law's current guidelines for the distribution of grades in a single course. Note that JD and LLM students take classes together and the entire class is graded on the same scale.

<b>A+</b> = 0-2%	<b>A</b> = 7-13%	<b>A-</b> = 16-24%
<b>B+</b> = 22-30%	<b>B</b> = Remainder	<b>B-</b> = 0-8% (First-Year JD); 4-11% (All other JD and LLM)
<b>C/D/F</b> = 0-5%	<b>CR</b> = Credit	<b>IP</b> = In Progress
<b>EXC</b> = Excused	<b>FAB</b> = Fail/Absence	<b>FX</b> = Failure for cheating
*** = Grade not yet submitted by faculty member		
Maximum for A tier = 31%; Maximum grades above B = 57%		

The guidelines for first-year JD courses are mandatory and binding on faculty members. In all other cases, they are advisory but strongly encouraged. These guidelines do not apply to seminar courses, defined for this purpose to mean any course in which there are fewer than 28 students taking the course for a letter grade.

NYU School of Law does not rank students and does not maintain records of cumulative averages for its students. For the specific purpose of awarding scholastic honors, however, unofficial cumulative averages are calculated by the Office of Records and Registration. The Office is specifically precluded by faculty rule from publishing averages and no record will appear upon any transcript issued. The Office of Records and Registration may not verify the results of a student's endeavor to define his or her own cumulative average or class rank to prospective employers.

Scholastic honors for JD candidates are as follows:

<b>Pomeroy Scholar:</b>	Top ten students in the class after <u>two</u> semesters
<b>Butler Scholar:</b>	Top ten students in the class after <u>four</u> semesters
<b>Florence Allen Scholar:</b>	Top 10% of the class after <u>four</u> semesters
<b>Robert McKay Scholar:</b>	Top 25% of the class after <u>four</u> semesters

Named scholar designations are not available to JD students who transferred to NYU School of Law in their second year or to LLM students.

### Missing Grades

A transcript may be missing one or more grades for a variety of reasons, including: (1) the transcript was printed prior to a grade-submission deadline; (2) the student has made prior arrangements with the faculty member to submit work later than the end of the semester in which the course is given; and (3) late submission of a grade. Please note that an In Progress (IP) grade may denote the fact that the student is completing a long-term research project in conjunction with this class. NYU School of Law requires students to complete a Substantial Writing paper for the JD degree. Many students, under the supervision of their faculty member, spend more than one semester working on the paper. For students who have received permission to work on the paper beyond the semester in which the registration occurs, a grade of IP is noted to reflect that the paper is in progress. Employers desiring more information about a missing grade may contact the Office of Records & Registration (212-998-6040).

### Class Profile

The admissions process for all NYU School of Law students is highly selective and seeks to enroll individuals of exceptional ability. The Committee on Admissions selects those candidates it considers to have the very strongest combination of qualifications and the very greatest potential to contribute to the NYU School of Law community and the legal profession. The Committee bases its decisions on intellectual potential, academic achievement, character, community involvement, and work experience. For the Class entering in Fall 2020 (the most recent entering class), the 75th/25th percentiles for LSAT and GPA were 172/167 and 3.9/3.7. Because of the breadth of the backgrounds of LLM students and the fact that foreign-trained LLM students do not take the LSAT, their admission is based on their prior legal academic performance together with the other criteria described above.

Updated: 9/14/2020

Name: Sophia Nitzan Stefanovic  
 Print Date: 11/16/2020  
 Student ID: N13404178  
 Institution ID: 002785  
 Page: 1 of 2

New York University  
 Beginning of School of Law Record

Juris Doctor  
 School of Law  
 Major: Law

Degrees Awarded

05/20/2020

Fall 2017

School of Law  
 Juris Doctor  
 Major: Law

Lawyering (Year) LAW-LW 10687 2.5 CR  
 Instructor: Maryam Jamshidi

Criminal Law LAW-LW 11147 4.0 A-  
 Instructor: Crystal Yang

Procedure LAW-LW 11650 5.0 B  
 Instructor: Samuel Issacharoff

Contracts LAW-LW 11672 4.0 B  
 Instructor: Richard Rexford Wayne Brooks

1L Reading Group LAW-LW 12339 0.0 CR  
 Topic: Combatting Human Trafficking  
 Instructor: Anne M Milgram

Current AHRS 15.5 EHRS 15.5  
 Cumulative 15.5 15.5

Spring 2018

School of Law  
 Juris Doctor  
 Major: Law

Lawyering (Year) LAW-LW 10687 2.5 CR  
 Instructor: Maryam Jamshidi

Legislation and the Regulatory State LAW-LW 10925 4.0 B  
 Instructor: Sally Katzen Dyk

Torts LAW-LW 11275 4.0 B  
 Instructor: Barry E Adler

International Law LAW-LW 11577 4.0 B  
 Instructor: Jose E Alvarez

1L Reading Group LAW-LW 12339 0.0 CR  
 Topic: Combatting Human Trafficking  
 Instructor: Anne M Milgram

Current AHRS 14.5 EHRS 14.5  
 Cumulative 30.0 30.0

Fall 2018

School of Law  
 Juris Doctor  
 Major: Law

National Security Law and Policy Seminar LAW-LW 10067 2.0 A-  
 Instructor: Lisa Monaco

Corporations LAW-LW 10644 5.0 B+  
 Instructor: Edward Baron Rock

Professional Responsibility and the Regulation of Lawyers LAW-LW 11479 2.0 B+  
 Instructor: Burt Neuborne

Constitutional Law LAW-LW 11702 4.0 B  
 Instructor: Melissa E Murray

Current AHRS 13.0 EHRS 13.0  
 Cumulative 43.0 43.0

Spring 2019

School of Law

Juris Doctor  
 Major: Law

Economic and Social Rights LAW-LW 10014 4.0 B+  
 Instructor: Philip G Alston

International Litigation and Arbitration LAW-LW 10272 4.0 A-  
 Instructor: Linda J Silberman  
 Kevin D Benish  
 Lawrence Collins

Property LAW-LW 11783 4.0 B+  
 Instructor: Daniel Hulsebosch

Current AHRS 12.0 EHRS 12.0  
 Cumulative 55.0 55.0

Fall 2019

School of Law  
 Juris Doctor  
 Major: Law

Prosecution Externship - Eastern District LAW-LW 10103 3.0 CR  
 Instructor: Jacquelyn M Kasulis  
 Alixandra Smith

Criminal Procedure: The Adjudicatory Part - from First Appearance to Post Conviction LAW-LW 10104 4.0 A  
 Instructor: James B Jacobs  
 Anne M Milgram

Prosecution Externship - Eastern District Seminar LAW-LW 10355 2.0 A  
 Instructor: Jacquelyn M Kasulis  
 Alixandra Smith

Conflict of Laws LAW-LW 10701 4.0 B+  
 Instructor: Linda J Silberman

Journal of International Law & Politics LAW-LW 10935 1.0 CR  
 Teaching Assistant LAW-LW 11608 1.0 CR  
 Instructor: Gerald Lebovits

Current AHRS 15.0 EHRS 15.0  
 Cumulative 70.0 70.0

Spring 2020

School of Law  
 Juris Doctor  
 Major: Law

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Due to the COVID-19 pandemic, all spring 2020 NYU School of Law (LAW-LW.) courses were graded on a mandatory CREDIT/FAIL basis.

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Government Civil Litigation Externship - Eastern District LAW-LW 10253 3.0 CR  
 Instructor: James R Cho

Government Civil Litigation Externship - Eastern District Seminar LAW-LW 10554 2.0 CR  
 Instructor: James R Cho

Journal of International Law & Politics LAW-LW 10935 1.0 CR  
 Legal History Colloquium LAW-LW 11160 2.0 CR  
 Instructor: David M Golove  
 Daniel Hulsebosch

Evidence LAW-LW 11607 4.0 CR  
 Instructor: Daniel J Capra

Research Assistant LAW-LW 12589 1.0 CR  
 Instructor: Anne M Milgram

Current AHRS 13.0 EHRS 13.0  
 Cumulative 83.0 83.0

Staff Editor - Journal of International Law & Politics 2018-2019  
 Managing Editor - Journal of International Law & Politics 2019-2020

<b>Name:</b>	Sophia Nitzan Stefanovic
<b>Print Date:</b>	11/16/2020
<b>Student ID:</b>	N13404178
<b>Institution ID:</b>	002785
<b>Page:</b>	2 of 2

End of School of Law Record

Unofficial

## INTERNAL ACADEMIC RECORD FOR:

Sophia Nitzan Staley (Id: B00583165)

**NOT FOR TRANSCRIPT PURPOSES****NOTE: Grade of S\* indicates a mandatory S/NC course****NOTE: The (✓) adjacent to the course title indicates a writing deficiency indicator**

Fall 2010: Admitted as a Degree Candidate: The College

**Term:** Fall 2010      **Academic Standing:** Good Standing      **Workload Status:** Full Time  
**Level:** Undergraduate      **Classification:** Semester Level 01

Course Code	Course Title	Grade Mode	Grade	Credit
ARCH 0270 S01	Troy: Archaeology of an Epic	G	A	1.00
ENGL 0410L S01	Literature, Trauma, and War	G	A	1.00
ENGN 0090 S01	Mngmt Industrial/Nonprofit Org	G	B	1.00
POLS 0400 S01	Intro to International Politcs	G	A	1.00
<b>Course Credits Earned:</b>		<b>Semester</b>	<b>Cumulative</b>	<b>4.000</b>
<b>Enrollment Units:</b>		<b>Semester</b>	<b>Cumulative</b>	<b>4.000</b>

**Term:** Spring 2011      **Academic Standing:** Good Standing      **Workload Status:** Full Time  
**Level:** Undergraduate      **Classification:** Semester Level 02

Course Code	Course Title	Grade Mode	Grade	Credit
ARCH 0030 S01	Art in Antiquity: An Intro	G	A	1.00
ECON 0110 S01	Principles of Economics	G	B	1.00
HIST 1370 S01	Germany, 1914 to the Present	G	B	1.00
POLS 1280 S01	Politics, Econ, Socty in India	G	DR 05/10	0.00
<b>Course Credits Earned:</b>		<b>Semester</b>	<b>Cumulative</b>	<b>7.000</b>
<b>Enrollment Units:</b>		<b>Semester</b>	<b>Cumulative</b>	<b>8.000</b>

**Term:** Fall 2011      **Academic Standing:** Good Standing      **Workload Status:** Full Time  
**Level:** Undergraduate      **Classification:** Semester Level 03

Course Code	Course Title	Grade Mode	Grade	Credit
CSCI 0931 S01	Intro to CS for Hum + Soc Sci	G	A	1.00



Display Internal Academic Record

[https://selfservice.brown.edu/ss/swp\\_internal\\_acad\\_record.p\\_S...](https://selfservice.brown.edu/ss/swp_internal_acad_record.p_S...)

GRMN 0100	S03	Beginning German (Year Course)	G	A	1.00
HIAA 0150	S01	Visal Cultr of Hispanic World	G	A	1.00
HIAA 0600	S01	Baroque	G	B	1.00
<b>Course Credits Earned:</b>		<b>Semester</b>	4.000	<b>Cumulative</b>	11.000
<b>Enrollment Units:</b>		<b>Semester</b>	4.000	<b>Cumulative</b>	12.000

**Term:** Spring 2012      **Academic Standing:** Good Standing      **Workload Status:** Full Time  
**Level:** Undergraduate      **Classification:** Semester Level 04

Course Code			Course Title	Grade Mode	Grade	Credit
GRMN	0200	S03	Beginning German (Year Course)	G	A	1.00
HIST	0980B	S01	Becoming French	G	B	1.00
HIST	1730	S01	Antebellum Amer:Rd. to Civ War	G	B	1.00
POLS	1130	S01	The American Presidency	G	B	1.00
Course Credits Earned:			Semester	4.000	Cumulative	15.000
Enrollment Units:			Semester	4.000	Cumulative	16.000

Fall 2012:      Leave of Absence to Study Abroad  
 (Full Tuition)

For work completed at Berkeley College New York City(09/12-12/12)

Course Code	Course Title		Grade	Credit	
SAB CRSE	Advanced Seminar		S	1.00	
SAB CRSE	Intermediate German II		S	1.00	
SAB CRSE	Politics, Power & Society		S	1.00	
SAB CRSE	Spec Topics		S	1.00	
Course Credits Earned:		Semester	4.000	Cumulative	19.000
Enrollment Units:		Semester	4.000	Cumulative	20.000

Spring 2013:      Returned From Exchange Program or Leave to Study Abroad

**Term:** Spring 2013      **Academic Standing:** Good Standing      **Workload Status:** Full Time  
**Level:** Undergraduate      **Classification:** Semester Level 06

Course Code	Course Title	Grade Mode	Grade	Credit
GRMN 0400 S02	Intermediate German II	G	A	1.00

Display Internal Academic Record

[https://selfservice.brown.edu/ss/swp\\_internal\\_acad\\_record.p\\_S...](https://selfservice.brown.edu/ss/swp_internal_acad_record.p_S...)

GRMN 1340M S02	Kafka's Writing	G	A	1.00
POLS 1822U S02	War and Human Rights	G	A	1.00
RELS 1760 S01	Religion and Suspicion	G	B	1.00

<b>Course Credits Earned:</b>	<b>Semester</b>	4.000	<b>Cumulative</b>	23.000
<b>Enrollment Units:</b>	<b>Semester</b>	4.000	<b>Cumulative</b>	24.000

<b>Term:</b> Fall 2013	<b>Academic Standing:</b> Good Standing	<b>Workload Status:</b> Full Time
<b>Level:</b> Undergraduate	<b>Classification:</b> Semester Level 07	

Course Code	Course Title	Grade Mode	Grade	Credit
GRMN 0500F S01	20th Century German Culture	G	A	1.00
GRMN 1200C S01	Nietzsche - The Good European	G	A	1.00
HIST 1350 S01	Modern Genocide + Other Crimes	G	A	1.00
POLS 1550 S01	War and Politics	G	A	1.00
<b>Course Credits Earned:</b>	<b>Semester</b>	4.000	<b>Cumulative</b>	27.000
<b>Enrollment Units:</b>	<b>Semester</b>	4.000	<b>Cumulative</b>	28.000

<b>Term:</b> Spring 2014	<b>Academic Standing:</b> Good Standing	<b>Workload Status:</b> Full Time
<b>Level:</b> Undergraduate	<b>Classification:</b> Semester Level 08	

Course Code	Course Title	Grade Mode	Grade	Credit
GRMN 1900F S01	Berlin gestern und heute	G	A	1.00
HIST 1455 S01	The Making of the Mod Mid East	G	A	1.00
TAPS 0220 S04	Persuasive Communication	S	S*	1.00
<b>Course Credits Earned:</b>	<b>Semester</b>	3.000	<b>Cumulative</b>	30.000
<b>Enrollment Units:</b>	<b>Semester</b>	4.000	<b>Cumulative</b>	32.000

**Degree Awarded**

Bachelor of Arts

May 25, 2014

AB - German Studies

**End of Academic Record**

March 03, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1620  
New York, NY 10007-1312

Dear Judge Liman:

I am writing to strongly recommend Sophia Stefanović, who graduated from New York University School of Law in May 2020, for a clerkship in your chambers. It is my pleasure to give Sophia my highest recommendation. Put simply, Sophia is one of the best law students with whom I have worked during my nearly ten years of teaching at NYU School of Law.

I have had the privilege to know Sophia for her three years at NYU Law: I taught her 1L reading group on human trafficking; I co-taught her in Criminal Procedure in her 3L Fall, and she was my research assistant in her 3L Spring. Sophia has been a fantastic student and a wonderful research assistant. During the time that we have known one another, I have also gotten to know Sophia personally. She stands out for her keen intellect, her hard-work, and her kindness. I am confident that she will be an outstanding lawyer and a wonderful law clerk.

In both the reading group and Criminal Procedure, Sophia mastered complex legal issues and contributed during class in thoughtful, insightful ways. Sophia came to each class fully prepared and ready to participate. Sophia also stood out for her genuine curiosity and interest in learning.

In Criminal Procedure, Sophia would often volunteer to discuss a case that we had read. She was always prepared to explain the facts and procedural background of a case, and also to discuss its holding and other substantive elements. Sophia also asked outstanding questions and was a vital part of our class discussions. She always considered other perspectives while convincingly conveying her own position, proving herself to be as good a listener as she is an effective advocate. Sophia's Criminal Procedure class remains one of my favorite classes that I have taught at NYU Law, and she was integral to the class dynamic and class discussion. She respectfully participated in debates on how to structure and fund public defense, as well as how to improve pretrial practices, plea bargaining, and sentencing.

Since Sophia had worked as a trial preparation assistant at the New York County District Attorney's Office and as an intern at the U.S. Attorney's Office, she brought a real-world perspective to our class, which was invaluable. Her prior work experience with both Brady and Giglio material helped to bring those cases to life for the other students.

In short, Sophia was able to grasp both theoretical legal issues and the practical application of court decisions in a way that many students struggle to do. I also believe that her prior work experience has given her a deep maturity, as well as a commitment to hard work and organization. Sophia received an A in Criminal Procedure because, in addition to her class participation, she had the second-best exam in our class of 25. Her writing on the exam was clear, succinct, and showed full command of the material.

In her 3L spring, Sophia took the initiative and asked to be my research assistant. Her main research topic was how data and technology can improve the criminal justice system. She researched whether there are existing court scheduling applications, and looked at different systems and how they coordinate court appearances for criminal defendants. When the pandemic hit, Sophia researched the effects of COVID-19 on the release of incarcerated individuals. She also researched the impact of COVID-19 on domestic violence, and how communities have responded to increasing rates of domestic violence.

Each time I assigned a task to Sophie, she thoughtfully repeated my request back to me in her own words to make sure that she understood what I wanted, and asked for a timeline. She kept track of and met all deadlines, and she communicated with me whenever she had questions that needed additional guidance. Sophia's research was incredibly well organized, well presented, and thorough. Each document that she sent me began with the question that I wanted her to research, followed by a short answer and summary of how she arrived at that answer, as well as one or two key journal or news articles on point. The document then included a summary of the journal and news articles that she relied upon. Week after week, Sophia's writing was excellent. She identified issues and provided research in a way that was clear and concise. Not only did Sophia continually demonstrate her ability to comprehend, synthesize, and analyze complex legal concepts, she also applied those concepts to concrete, on-the-ground problems—a skill essential for a judicial clerk.

I asked Sophia to join me on several work calls with colleagues, and she was professional and asked important follow-up questions related to her research. Sophia is truly a pleasure to work with: she is easy to communicate with and makes certain that she understands the question being asked in any assignment. She also writes well and in a clear, straight-forward way that is easy to understand. I was also deeply impressed with Sophia's organizational skills and her efficiency.

Equally importantly, I found Sophia to be an absolute pleasure to work with. She is kind, hard-working, open to direction and feedback, and prompt in all of her work. Time and time again, Sophia went beyond what was asked of her.

For these reasons, I cannot recommend Sophia strongly enough. If you have any questions, or if I can provide any additional

Anne Milgram - anne.milgram@nyu.edu - (212) 992-8832

information, please do not hesitate to contact me at [anne.milgram@nyu.edu](mailto:anne.milgram@nyu.edu) or 202-744-1893.

Sincerely,  
Anne Milgram

Anne Milgram - [anne.milgram@nyu.edu](mailto:anne.milgram@nyu.edu) - (212) 992-8832



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

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*271 Cadman Plaza East  
Brooklyn, New York 11201*

January 15, 2021

Re: Letter of Recommendation for Sophia Nitzan Stefanovic

Your Honor:

I am thrilled to have the opportunity to recommend Sophia Nitzan Stefanovic for a clerkship with Your Honor.

I currently serve as Chief of Immigration and Bankruptcy litigation with the Civil Division of the U.S. Attorney's Office in Brooklyn. I also teach a federal government civil litigation course at New York University Law School. Ms. Stefanovic was one of my students during the Spring 2020 semester. As part of the course, she also worked as an intern with my Office.

Ms. Stefanovic was one of my star students. During her internship, and as part of my course, Ms. Stefanovic worked on a number of complex assignments, including drafting motions, and research memos. I found her extremely articulate, motivated, and intelligent. Ms. Stefanovic writes clearly, concisely, and persuasively. I was also particularly impressed by her oral advocacy. Ms. Stefanovic participated in a mock opening statement as part of our class. Her argument was well-organized and persuasive, and she readily identified the salient issues in the case. Throughout the course, Ms. Stefanovic was poised and confident.

Ms. Stefanovic also has impressive academic credentials. At NYU Law School, she was the Managing Editor of the Journal of International Law and Politics, and served as a teaching assistant for Judge Gerald Lebovits.

I have worked with many law students over the years and Ms. Stefanovic was by far one of the best I ever had. She was truly a stellar student, and an asset to my Office. Despite working hard under often tight deadlines, she always had a pleasant demeanor. I am confident that Ms. Stefanovic will make an excellent clerk. If you have any questions, or would like to discuss her candidacy further, please do not hesitate to contact me.

Very truly yours,

By: s/ James R. Cho  
James R. Cho  
Assistant U.S. Attorney  
(718) 254-6519  
james.cho@usdoj.gov

Matthew J. Mailloux

Assistant United States Attorney, Eastern District of New York

271-A Cadman Plaza East, 7th Floor Brooklyn, NY 11201

Tel. (718) 254-6176, email: [matthew.mailloux@usdoj.gov](mailto:matthew.mailloux@usdoj.gov)

March 03, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

Dear Judge Liman:

I write to recommend Ms. Sophia Stefanovic for a position as a judicial law clerk in your chambers. Based on my experience supervising Ms. Stefanovic, and observing her hard work as an intern, I believe she would be well-suited for this position.

I have been fortunate to know Ms. Stefanovic since her spring 2020 internship with the United States Attorney's Office for the Eastern District of New York. This internship required Ms. Stefanovic to balance multiple projects under sometimes demanding deadlines. She worked on a variety of assignments supporting the Civil Division's affirmative and defensive litigation. Her strong work ethic, legal acumen, and attention to detail illustrate how she would be an asset to your chambers as a judicial law clerk.

During her internship, Ms. Stefanovic contributed meaningfully to the successful resolution of numerous cases across a broad range of affirmative and defensive civil litigation. One significant example comes from her work in support of preparing a motion to dismiss. Ms. Stefanovic quickly and thoroughly researched the factual allegations and applicable caselaw to determine that dismissal was appropriate. She prepared thoughtful memoranda analyzing the issues, which were largely incorporated into the final versions of the filed documents because of the attention to detail and professionalism used when preparing the documents. Additionally, Ms. Stefanovic attended court conferences, and understands the level of professionalism expected of a judicial law clerk.

Ms. Stefanovic demonstrated her strong work ethic and adaptability during the COVID-19 pandemic that required our Office to quickly transition to working remotely. Ms. Stefanovic transitioned to this remote work environment and continued her high level of productivity and professionalism.

In short, I recommend Ms. Stefanovic as a judicial law clerk and believe she would be an asset to your chambers. Please do not hesitate to contact me if I can be of any further assistance.

Very truly yours,  
Matthew J. Mailloux  
Assistant United States Attorney

Matthew Mailloux - [matthew.mailloux@usdoj.gov](mailto:matthew.mailloux@usdoj.gov) - 718-254-6176

**SOPHIA NITZAN STEFANOVIĆ**

46 Lispenard Street, Apartment 3W • New York, NY 10013 • (646) 369-2259 • sns382@nyu.edu

**WRITING SAMPLE**

Drafted Spring 2021

My writing sample is a brief that I wrote on behalf of a veteran to the Board of Veterans' Appeals claiming disability benefits for a pro bono matter at White & Case. This brief has not been edited by others, but it has been redacted.

IN THE APPEAL OF

SS [REDACTED]  
DOCKET NO. [REDACTED]**BRIEF IN SUPPORT OF VETERAN'S CLAIM****I. INTRODUCTION**

On January 27, 2021, the United States Court of Appeals for Veterans Claims (the "Court") vacated the Board of Veterans' Appeals (the "Board") March 9, 2020 decision to the extent that it denied [REDACTED] ("Mr. [REDACTED]") a separate rating for crepitus of his right knee under Diagnostic Code ("DC") 5259 and remanded his case to the Board for readjudication. Court Order (February 11, 2021); Board Decision (March 9, 2020). Before that, on January 11, 2021, Mr. [REDACTED] and the Board filed a Joint Motion for Partial Remand ("JMPR") where they agreed that vacatur and remand were warranted because the Board failed to provide an adequate statement of reasons or bases for its March 9, 2020 decision to the extent that it denied Mr. [REDACTED] a separate rating for crepitus of his right knee under DC 5259. JMPR (January 11, 2021); *see* 38 U.S.C. § 7104(d)(1); *see also* *Allday v. Brown*, 7 Vet.App. 517, 527 (1995); *Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990). Mr. [REDACTED] respectfully requests that the Board grant his claim for at least a 10% rating in connection with crepitus of his right knee under DC 5259 as of June 5, 2013, the date of the Veterans Affairs ("VA") examination where his crepitus was first noted after his first meniscectomy. Private Medical Opinion (June 5, 2013).

**II. WAIVER OF REVIEW BY THE AGENCY**

Mr. [REDACTED] waives Agency of Original Jurisdiction review of any new evidence submitted.

**III. FACTS AND BACKGROUND****A. The Claim and Issue**

Mr. [REDACTED]'s claim is that he should receive at least a 10% rating in connection with crepitus of his right knee under DC 5259 as of June 5, 2013, in addition to and separate from the rating he already received under DC 5257 as of August 6, 2013. Mr. [REDACTED] received a 10% rating for his right knee under DC 5257 for the symptoms of pain and locking, therefore Mr. [REDACTED] is entitled to a separate rating of 10% under DC 5259 for the additional symptom of crepitus.



**B. Mr. ██████'s Right Knee Injury, Surgeries, and Rating History**

Mr. ██████ served in active duty in the United States Army from December 7, 1970 to December 7, 1973. Compensation and Pension (“C&P”) Examination at p. 1 (June 24, 2009). He sustained a patellar dislocation when he was wrestling with another service member on February 22, 1973 while on active duty. *Id.*; Disability Benefits Questionnaire (“DBQ”) at p. 2 (June 3, 2019).

On March 27, 2009, Mr. ██████ filed a claim for service-connected compensation for his right knee disability, and, on July 22, 2009, the Houston RO granted him a 10% rating in connection with degenerative osteoarthritis of his right knee under DC 5010. Rating Decision (July 22, 2009). The Houston RO granted this rating in part because of the findings from a C&P examination that took place on June 24, 2009. C&P Examination (June 24, 2009). At this examination, the examiner noted that Mr. ██████'s right knee gives him the sense of “giving way.” *Id.* He added: “There is some increased laxity to the patella with lateral motion. . . . There is crepitus with range of motion. He has a positive patellar grind. He had palpable medial osteophytes and there is tenderness to palpation over the medial facette of the patella as well.” *Id.*

On August 26, 2009, Mr. ██████ had surgery on his right knee to repair a meniscus tear. DBQ at p. 3 (June 3, 2019); Private Medical Opinion (August 26, 2009). Specifically, the operations performed were: arthroscopy of the right knee, partial medial and lateral meniscectomy, joint debridement, and chondroplasty of the medial and lateral compartment. Private Medical Opinion (August 26, 2009).

Mr. ██████ applied for an increase in his 10% rating in connection with degenerative osteoarthritis of his right knee under DC 5010 on September 29, 2009 and again on October 25, 2010, but the Houston RO denied these increases on June 3, 2010 and May 2, 2013, respectively. Rating Decision (June 3, 2010); Rating Decision (May 2, 2013). As part of its reasoning for denying the increase, the Houston RO in its June 3, 2010 rating decision explained that “[t]here was crepitus but no tenderness, laxity, or subluxation.” Rating Decision (June 3, 2010). It therefore concluded that a higher evaluation of 20% was not warranted but that Mr. ██████ should retain his 10% rating under DC 5010 “for painful or limited motion of a major joint—shown by crepitus and pain at the extreme of extension.” Rating Decision (June 3, 2010).

On June 5, 2013, at a private examination, Mr. [REDACTED] complained that his right knee was painful and locking. Private Medical Opinion (June 5, 2013). The private doctor noted that Mr. [REDACTED] “[c]ame in complaining of locking right knee.” *Id.* He added: “Pain of right knee, crepitation in the right knee and severe pain. The patient is a 62-year-old status post arthroscopy of the right knee in 2009, which helped quite a bit. He is now complaining of pain over the right knee medial and lateral aspects” and “The patient, at some point, is going to need a total knee replacement but for the time being he wanted to have the loose bodies removed so he does not have the locking.” *Id.* Therefore, on July 19, 2013, Mr. [REDACTED] had another surgery on his right knee. DBQ at p. 4 (June 3, 2019); Private Medical Opinion (July 19, 2013). Specifically, the operations performed were: arthroscopy of the right knee, partial mediolateral meniscectomy, synovectomy of the patellofemoral compartment, mediolateral compartment, and debridement of the joint with chondroplasty. Private Medical Opinion (July 19, 2013).

Partially because of this surgery, Mr. [REDACTED] filed a new claim for service-connected compensation for his right knee disability on August 6, 2013, and, on April 15, 2014, the Houston RO granted him the following: first, a temporary 100% rating in connection with degenerative osteoarthritis of his right knee under DC 5010 for the purpose of surgical convalescence (38 C.F.R. § 4.30) from July 19, 2013 to August 19, 2013; second, a 10% rating in connection with degenerative osteoarthritis of his right knee under DC 5010 as of September 1, 2013; and third, a 10% rating in connection with subluxation of his right knee under DC 5257 as of August 6, 2013. Rating Decision (April 15, 2014).

According to Mr. [REDACTED]’s Statement in Support of Claim (“Statement”) (attached hereto as Exhibit 1), on May 10, 2021, Mr. [REDACTED] stated that his knee impacts his ability to walk and that he currently feels a grating sensation, friction, and pain in his knee. Exhibit 1. He also stated that these symptoms are exacerbated when he stands or sits for more than 30 minutes, when he moves too fast, and during cold snaps. *Id.* Crepitus is defined as the “grinding or crackling sound heard when the broken ends of a fractured bone rub together,” as well as the “grating sensation felt when a joint affected by arthritis is moved and dry or damaged joint surfaces rub together.” <https://medical-dictionary.thefreedictionary.com/crepitus>. Therefore, arguably, Mr. [REDACTED] is still experiencing crepitus.

### C. The Board's Decisions

Mr. ██████ appealed the Houston RO's May 2, 2013 decision, which denied an increase in his 10% rating in connection with degenerative osteoarthritis of his right knee under DC 5010, to the Board. Board Decision at p. 2 (March 9, 2020). As part of the appeal, the Board ordered Mr. ██████ to undergo a number of VA examinations. One examination took place on April 4, 2014, and the examiner found pain, weakness, fatigability, swelling, less movement than normal, and crepitus of the right knee. DBQ (April 4, 2014). However, even though the examiner correctly noted that Mr. ██████ had arthroscopic surgery in 2009 and again in 2013, the examiner incorrectly checked off that Mr. ██████ did not have any surgical procedures for a meniscal condition. DBQ (April 4, 2014). Therefore, the Board ordered an additional examination to address the severity of Mr. ██████'s right knee disability. Board Decision at p. 4 (March 9, 2020). On June 16, 2016, Mr. ██████ underwent another VA examination. DBQ (June 16, 2016). At this examination, although Mr. ██████ said that his right knee was "not really bothering [him] since [the] last procedure," he also said that his right knee was bothering him "last week" and bothered him "when walking." *Id.* However, the examiner found no pain, weakness, fatigability, flare-ups, or crepitus in this examination. *Id.* Nevertheless, the Board found that the examiner on June 16, 2016 did not review Mr. ██████'s case file in full, and so it ordered an additional examination to address the severity of Mr. ██████'s right knee disability. Board Decision at p. 5 (March 9, 2020). Therefore, Mr. ██████ underwent another VA examination on June 3, 2019, where Mr. ██████ denied experiencing flare-ups and pain, and the examiner found no objective evidence of crepitus. DBQ at p. 6 (June 3, 2019).

On March 9, 2020, the Board denied Mr. ██████ an increase in his 10% rating for instability in the right knee. Board Decision at p. 2 (March 9, 2020). Additionally, the Board denied him a 10% rating under DC 5259. *Id.* at p. 7. The Board explained that, under 38 C.F.R. § 4.71a, DC 5259, when a veteran's semilunar cartilage has been removed (meaning when the veteran undergoes a meniscectomy), but the veteran remains symptomatic, a 10% rating should be assigned. *Id.* Symptoms such as pain, locking, and crepitus (among others) after a meniscectomy are sufficient to grant the veteran a 10% rating under DC 5259. Mr. ██████ did in fact suffer from both pain and crepitus after his two meniscectomies. Private

Medical Opinion (June 5, 2013); DBQ (April 4, 2014). Therefore, it would seem that Mr. [REDACTED] was entitled to a 10% rating in connection with pain and crepitus of his right knee under DC 5259. However, as the Board explained, the VA prohibits “pyramiding,” or the compensation for the same symptoms under two different diagnostic codes (Board Decision at p. 7-8 (March 9, 2020)), and Mr. [REDACTED] already received a 10% rating in connection with subluxation of his right knee under DC 5257 that specifically addressed his symptoms of right knee pain and locking. Therefore, the Board reasoned that, since Mr. [REDACTED] already received a 10% rating under DC 5257 for his symptoms of right knee pain and locking, it could not grant a separate rating under DC 5259 because those symptoms were already considered under DC 5257. *Id.*

#### **D. Joint Motion for Remand and Subsequent History**

On January 11, 2021, Mr. [REDACTED] and the Board filed a Joint Motion for Partial Remand (“JMPR”) to vacate and remand the Board’s March 9, 2020 decision to the extent that it denied Mr. [REDACTED] a separate rating for crepitus of his right knee under DC 5259. JMPR (January 11, 2021). The parties explained that, although the Board correctly denied a 10% rating under DC 5259 in connection with the symptoms of pain and locking (since Mr. [REDACTED] already had a 10% rating under DC 5257 in connection with these symptoms and so to grant him a 10% rating under DC 5259 for the same symptoms would be impermissible pyramiding), it incorrectly denied a 10% rating under DC 5259 in connection with the symptom of crepitus (which Mr. [REDACTED]’s 10% rating under DC 5257 did not consider). *Id.* Since the Board failed to consider whether a separate rating under DC 5259 for crepitus was warranted, the parties sought partial vacatur and remand. *Id.* On January 27, 2021, the Court granted the parties’ JMPR, vacated the Board’s March 9, 2020 decision, and remanded Mr. [REDACTED]’s case to the Board for readjudication. Court Order (February 11, 2021).

#### **IV. LEGAL ARGUMENT**

At issue is whether Mr. [REDACTED] is entitled to a separate rating in connection with crepitus of his right knee under DC 5259 as of June 5, 2013, the date of the VA examination where his crepitus was first noted after his first meniscectomy. Private Medical Opinion (June 5, 2013). In making this determination, the Board must “consider all information,” including both “lay and medical evidence.” 38 U.S.C. § 5107(b).

When lay evidence is credible, “the Board cannot weigh the absence of contemporaneous medical evidence against the lay evidence of record.” *Buchanan v. Nicholson*, 451 F.3d 1331, 1337 (Fed. Cir. 2006). Further, so long as the evidence shows there is at least an “approximate balance of positive and negative evidence” as to the claim’s merits, Mr. [REDACTED] must receive “the benefit of the doubt.” *Id.* Finally, where there is a question as to which rating is more applicable to a disability, the higher rating must be assigned. 38 C.F.R. § 4.7.

The evidence supports that Mr. [REDACTED] is entitled to the separate rating in connection with crepitus of his right knee under DC 5259 for several reasons. Mr. [REDACTED] had two meniscectomies, also known as semilunar cartilage removal, which is required under DC 5259. Private Medical Opinion (August 26, 2009); Private Medical Opinion (July 19, 2013); <https://medical-dictionary.thefreedictionary.com/meniscectomy>; 38 C.F.R. § 4.71a. Mr. [REDACTED] experienced both pain and crepitus after his two meniscectomies. Private Medical Opinion (June 5, 2013); DBQ (April 4, 2014). Therefore, he was “symptomatic” after his two meniscectomies, which is another requirement of DC 5259. 38 C.F.R. § 4.71a. The medical evidence demonstrates that he had crepitus on June 5, 2013 after his August 26, 2009 meniscectomy and again on April 4, 2014 after his July 13, 2013 meniscectomy. Private Medical Opinion (June 5, 2013); DBQ (April 4, 2014).

Although the VA prohibits pyramiding, and although Mr. [REDACTED] already received a 10% rating in connection with subluxation of his right knee under DC 5257 that specifically addressed his symptoms of pain and locking, he is entitled to a separate 10% rating in connection with removal of semilunar cartilage from his right knee under DC 5259 for the symptom of crepitus because this is a different symptom/manifestation under a different DC. 38 C.F.R. § 4.14; Rating Decision (April 15, 2014). Mr. [REDACTED] is not seeking a 10% rating in connection with removal of semilunar cartilage under DC 5259 for the symptoms of pain and locking, which have already been compensated under DC 5257; rather he requests a rating under DC 5259 for the symptom of crepitus.

Similarly, although the Houston RO seems to have considered crepitus in issuing its June 3, 2010 rating decision, which found that Mr. ██████ should retain his 10% rating under DC 5010, this consideration of crepitus should not preclude the Board from awarding Mr. ██████ a separate 10% rating for crepitus under DC 5259 because the Houston RO improperly considered crepitus as DC 5010 does not in fact include crepitus. Rating Decision (June 3, 2010); 38 C.F.R. § 4.71a.

Finally, although crepitus was not found at later examinations of Mr. ██████'s right knee on June 16, 2016 and June 3, 2019, this absence of contemporaneous medical evidence does not outweigh the lay evidence of record, and this change in symptomatology does not preclude consideration of granting staged ratings. DBQ (June 16, 2016); DBQ at p. 6 (June 3, 2019).

**A. The Board Should Grant Mr. ██████ a Rating under DC 5259 Because He Underwent Semilunar Cartilage Removal and Then Experienced the Symptom of Crepitus**

Under 38 C.F.R. § 4.71a, DC 5259, a 10% disability rating for semilunar cartilage removal is appropriate where the veteran continues to experience symptoms after the procedure. A meniscectomy is the “surgical removal of a torn or displaced semilunar cartilage from the knee joint.” <https://medical-dictionary.thefreedictionary.com/meniscectomy>. The evidence establishes that Mr. ██████ had two right knee meniscectomies, and therefore two semilunar cartilage removals, on August 26, 2009 and July 13, 2013. Private Medical Opinion (August 26, 2009); Private Medical Opinion (July 19, 2013). According to his surgeon’s notes, on August 26, 2009, he underwent a “partial medial and lateral meniscectomy” and, on July 13, 2013, he underwent a “partial mediolateral meniscectomy.” *Id.* After both of these surgeries, Mr. ██████ continued to experience crepitus in his right knee. Crepitus is the “grinding or crackling sound heard when the broken ends of a fractured bone rub together,” as well as the “grating sensation felt when a joint affected by arthritis is moved and dry or damaged joint surfaces rub together.” <https://medical-dictionary.thefreedictionary.com/crepitus>. After his 2009 surgery, on June 5, 2013, his doctor noted that Mr. ██████ “[c]ame in complaining of locking right knee” and that he had “crepitation in the right knee and severe pain.” Private Medical Opinion (June 5, 2013). Similarly, after his 2013 surgery, on April 14, 2014, an examiner found pain, weakness, fatigability, swelling, less movement than normal, and crepitus

in his right knee. DBQ (April 4, 2014). Mr. [REDACTED] clearly meets the requirements of DC 5259, and so the Board should grant him a 10% rating in connection with semilunar cartilage removal under DC 5259 for the symptom of crepitus.

**B. The Board Should Grant Mr. [REDACTED] a Rating under DC 5259 Notwithstanding That He Already Has a Rating under DC 5257**

The Board should grant Mr. [REDACTED] a separate rating under DC 5259 notwithstanding that he already has a rating under DC 5257 because the rating under DC 5259 would be for a different symptom and therefore does not violate the VA's provision against pyramiding. The VA has an anti-pyramiding provision, which provides that "evaluation of the same disability under various diagnoses is to be avoided," including "the evaluation of the same manifestation under different diagnoses." 38 C.F.R. § 4.14. "The rationale for the prohibition on pyramiding is that 'the rating schedule may not be employed as a vehicle for compensating a claimant twice (or more) for the same symptomatology' because 'such a result would overcompensate the claimant for the actual impairment' in earning capacity suffered." *Lyles v. Shulkin*, 29 Vet. App. 107, 113 (U.S. 2017) (quoting *Brady v. Brown*, 4 Vet.App. 203, 206 (1993)). However, "it is possible for a veteran to have separate and distinct manifestations attributable to two different disability ratings, and, in such a case, the veteran should be compensated under different diagnoses." *Lyles*, 29 Vet. App. at 113 (quoting *Fanning v. Brown*, 4 Vet.App. 225, 230 (1993)). A manifestation of disability has not been compensated by an assigned evaluation if the manifestation is "distinct and separate" from the manifestations that form the basis of the assigned evaluation. *Murray v. Shinseki*, 24 Vet. App. 420, 423 (2011) (explaining that separate knee evaluations may be warranted where "the appellant's symptoms are distinct and separate" (internal quotation omitted)). The evaluation of a knee disability under DC 5257 does not preclude separate evaluation of meniscal disability of the same knee under DC 5259. *Lyles*, 29 Vet. App. at 109.

Therefore, although Mr. [REDACTED] has already been granted a 10% rating in connection with subluxation of his right knee under DC 5257 for the symptoms of pain and locking, this grant in no way prohibits the Board from issuing another rating for a different symptom/manifestation under a different DC,

which is exactly what Mr. [REDACTED] is asking for. Mr. [REDACTED] is not seeking a 10% rating in connection with semilunar cartilage removal under DC 5259 for the symptoms of pain and locking because these symptoms have already been compensated under DC 5257. Instead, Mr. [REDACTED] requests a 10% rating in connection with semilunar cartilage removal under DC 5259 for the symptom of crepitus, which the Board did not consider under DC 5257.

**C. The Houston RO June 3, 2010 Rating Decision Improperly Considered Crepitus, And So It Should Not Affect Mr. [REDACTED]'s Claim of a Rating Under DC 5259**

Although the Houston RO discussed crepitus in its June 3, 2010 rating decision, which found that Mr. [REDACTED] should retain his 10% rating under DC 5010, DC 5010 does not include crepitus, and so the Houston RO improperly considered crepitus in issuing this decision. Therefore, Mr. [REDACTED]'s crepitus still has not been properly considered and compensated, Mr. [REDACTED] should receive a separate 10% rating for crepitus under DC 5259, and this rating for crepitus under DC 5259 would not be impermissible pyramiding.

In its June 3, 2010 rating decision denying an increase to Mr. [REDACTED]'s 10% rating under DC 5010, the Houston RO considered crepitus. Rating Decision (June 3, 2010). Although the Houston RO found that a higher evaluation of 20% was not warranted, it held that Mr. [REDACTED] should retain his 10% rating under DC 5010 “for painful or limited motion of a major joint—shown by crepitus and pain at the extreme of extension.” Rating Decision (June 3, 2010). However, DC 5010 does not consider crepitus. 38 C.F.R. § 4.71a. Therefore, the Houston RO improperly considered crepitus in issuing its June 3, 2010 rating decision. This improper consideration means that Mr. [REDACTED]'s crepitus still has not been properly considered or compensated. The Board should now consider and award a rating for crepitus under DC 5259. Additionally, this rating for crepitus under DC 5259 would not be impermissible pyramiding under 38 C.F.R. § 4.14 because the June 3, 2010 rating decision did not properly take into account and compensate Mr. [REDACTED]'s crepitus.



**D. Later Examinations of Mr. ██████'s Right Knee Where No Crepitus Was Found Do Not Outweigh Lay Evidence and Do Not Preclude Consideration of Granting Staged Ratings**

When lay evidence is credible, “the Board cannot weigh the absence of contemporaneous medical evidence against the lay evidence of record.” *Buchanan*, 451 F.3d at 1337. Additionally, “in an original disability compensation claim, ‘at the time of an initial rating “separate ratings can be assigned for separate periods of time based on facts found”, a practice known as “staged” ratings.’” *Houston v. Nicholson*, 21 Vet. App. 418 (U.S. 2006) (quoting *Fenderson v. West*, 12 Vet. App. 119, 126 (1999)). Further, later in time denial of symptomatology does not preclude consideration of whether staged ratings may be warranted. See *Hart v. Mansfield*, 21 Vet.App. 505, 509 (2007); *Fenderson*, 12 Vet.App. at 126. Therefore, although later examinations of Mr. ██████'s right knee did not find crepitus, specifically on June 16, 2016 and June 3, 2019, the Board cannot discount Mr. ██████'s Statement from May 10, 2021 that he continues to experience crepitus, and, in the alternative, this change in symptomatology does not preclude Mr. ██████ from receiving a staged rating under DC 5259 before these dates. DBQ (June 16, 2016); DBQ at p. 6 (June 3, 2019).

Although later examination of Mr. ██████'s right knee did not find crepitus, specifically on June 16, 2016 and June 3, 2019, in Mr. ██████'s Statement from May 10, 2021, he stated that he continues to experience crepitus. DBQ (June 16, 2016); DBQ at p. 6 (June 3, 2019); Exhibit 1. In his Statement, Mr. ██████ explained that he currently feels a grating sensation and friction in his knee. Exhibit 1. Since the absence of contemporaneous medical evidence cannot outweigh the lay evidence of record when the lay evidence is credible, these later examinations where crepitus was not found should not affect or cut off Mr. ██████'s entitlement to a rating under DC 5259 because the credible lay evidence demonstrates that Mr. ██████ continues to experience crepitus even now in 2021.

Alternatively, if the Board finds that the lay evidence is not credible and that Mr. ██████ did not experience crepitus after June 16, 2016 and June 3, 2019, then the Board should still grant a separate 10%

rating for crepitus under DC 5259 because a change of symptomatology does not preclude the awarding of staged ratings. DBQ (June 16, 2016); DBQ at p. 6 (June 3, 2019). In other words, although Mr. [REDACTED] may not be entitled to a 10% rating in connection with crepitus under DC 5259 after June 16, 2016 or June 3, 2019, that does not preclude him from such an entitlement before then under the staged ratings practice. *Id.* Arguably, under the staged ratings practice, Mr. [REDACTED] should receive a 10% rating in connection with crepitus under DC 5259 starting on June 5, 2013 because this is the date of the VA examination where his crepitus was first noted after his first meniscectomy (Private Medical Opinion (June 5, 2013)), and so this is the date that he first meets the requirements of DC 5259 (See Section IV(A)). Additionally, the end date of his rating under DC 5259 should be June 3, 2019 instead of June 16, 2016 because the 2016 examination did not take into account Mr. [REDACTED]'s case file in full. Board Decision at p. 5 (March 9, 2020).

V. **CONCLUSION**

For the reasons state herein, the record demonstrates the impairment necessary to warrant a separate 10% rating for crepitus under DC 5259 for Mr. [REDACTED]'s right knee disability.

Date: May 10, 2021

Respectfully submitted,

---

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

*Representative for Mr.* [REDACTED]

**Exhibit 1**

Mr. [REDACTED]'s Statement in Support of Claim

May 10, 2021

I, [REDACTED] am submitting this statement in support of my claim for at least a 10% rating in connection with crepitus of my right knee under DC 5259.

I attest that I hurt my right knee in 1973 when I was on active duty wrestling with another service member. As a result, my knee jumped out of its socket, and I was in a cast for 3-4 months. Even after the cast, though, my knee caused me pain especially with excessive standing or sitting or during cold snaps.

My first knee surgery in 2009 eased the pain a lot, but the pain was still there, and I needed another surgery a few years later.

My second knee surgery in 2013 also helped ease the pain, but the pain was also still there.

My knee impacts my ability to walk. Currently, I still feel pain, a grating sensation, friction, and a popping in my knee. I feel these when I stand or sit for more than 30 minutes, when I move too fast, or during cold snaps. Also, my knee still jumps out of its socket sometimes.

I have not seen my private doctor who previously operated on my knee, Dr. [REDACTED], since COVID started.

\_\_\_\_\_  
[REDACTED]

\_\_\_\_\_  
Date

**Applicant Details**

First Name **Spencer**  
 Middle Initial **R**  
 Last Name **Talbot**  
 Citizenship Status **U. S. Citizen**  
 Email Address [srtalbot2@gmail.com](mailto:srtalbot2@gmail.com)

Address  
**Address**  
**Street**  
**302 Mitchell St.**  
**City**  
**Ithaca**  
**State/Territory**  
**New York**  
**Zip**  
**14850**  
**Country**  
**United States**

Contact Phone Number **(530) 601-0300**

**Applicant Education**

BA/BS From **University of California-San Diego**  
 Date of BA/BS **June 2019**  
 JD/LLB From **Cornell Law School**  
<http://www.lawschool.cornell.edu>  
 Date of JD/LLB **May 14, 2022**  
 Class Rank **I am not ranked**  
 Law Review/Journal **Yes**  
 Journal(s) **Cornell Law Review**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **Langfan Moot Court Competition**  
**Rossi Moot Court Competition**  
**Cuccia Moot Court Competition**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/Externships **No**

Post-graduate Judicial Law Clerk **No**

### **Specialized Work Experience**

#### **Recommenders**

Schwab, Stewart  
sjs15@cornell.edu  
607-255-3527

Lasser, Mitchel  
ml355@cornell.edu  
607-255-3383

Weyble, Keir  
kw346@cornell.edu  
607-255-3805

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Spencer R. Talbot  
302 Mitchell St.  
Ithaca, NY 14850  
[Srtalbot2@gmail.com](mailto:Srtalbot2@gmail.com)  
(530) 601-0300

March 13, 2022

The Honorable Lewis J. Liman  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

Dear Judge Liman:

I am a third-year student at Cornell Law School and wish to apply for a clerkship in your chambers for the 2024-2025 term. Upon graduation, I have an offer to work in the New York office of Weil, Gotshal, and Manges as an Antitrust Litigation associate.

I have included my resume, writing sample, law school transcript, and undergraduate transcript. Letters of recommendation from Cornell Law School professors Stewart Schwab, Mitchel Lasser, and Keir Weyble will follow.

Should you require any additional information, please do not hesitate to let me know. Thank you considering my application.

Respectfully,

Spencer R. Talbot

**Spencer R. Talbot**

302 Mitchell St. | Ithaca, NY 14850 | srtalbot2@gmail.com | (530) 601-0300

**Education****Cornell Law School**

J.D. expected, May 2022

GPA: 3.598Honors: Cornell Law Review – Notes Editor

Moot Court – Board Member; Round of 16 in Cuccia Moot Court Competition

Dean's List: Fall 2021

Note: *Famous Last Words: Personality Rights After Death for Verified Accounts*Research Assistant: Professor Stewart Schwab (Fall 2021); Professor Joe Margulies (Fall 2020)Activities: OutLaw (LGBTQ Law Student Group); Jewish Law Students Association;  
Society of Wine & Jurisprudence**University of California – San Diego**

B.A. June 2019

Double Major in International Business &amp; Comparative Politics; Specializations in Middle East &amp; Europe

GPA: 3.81Honors: *cum laude*, Phi Beta KappaCapstone Project: *Suffering from Success: An Analysis into the Causes of Mainstream Success for Populist Parties in Northern Ireland***Experience****Weil, Gotshal & Manges LLP**, New York, NYSummer Associate, Summer 2021

Drafted legal memorandum for litigation matters. Conducted legal research in antitrust, bankruptcy, commercial litigation, employment, mass torts, and white-collar matters.

**San Francisco District Attorney's Office**, San Francisco, CALaw Clerk, Summer 2020

Drafted, prepared, and successfully argued a pre-trial motion in court. Conducted legal research and drafted memoranda. Participated in pre-hearing preparations.

**Alpha Epsilon Pi Fraternity**, San Diego, CAJudicial Board Chairman, Jan. 2018 – Dec. 2018

Presided over Judicial Board meetings. Reviewed and decided cases involving alleged violations of the Fraternity Code of Conduct. Mediated disputes and engaged in conflict resolution process among chapter members.

**Rains Lucia Stern St. Phalle & Silver, PC**, Santa Monica, CALegal Intern, Summer 2018

Shadowed attorneys to court proceedings, negotiations, and personnel investigations. Performed office administrative duties in statewide labor and litigation law firm.

**Kennolyn Camps**, Soquel, CAActivities Coordinator and Counselor, Summer 2015 & 2016

Orchestrated camp activities for children ages 8–15 and supervised counselors regarding activities. Served as general counselor for eight campers participating in two-week camp sessions.

**Interests**

Sacramento Kings; History podcasts; Folk and Punk music; Karaoke; Traveling; Playing guitar



Cornell Law School - Grade Report - 01/25/2022

## Spencer R Talbot

JD, Class of 2022

Course	Title	Instructor(s)	Credits	Grade
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**Fall 2019 (8/27/2019 - 12/23/2019)**

LAW 5001.1	Civil Procedure	Cavanagh	3.0	B
LAW 5021.1	Constitutional Law	Johnson	4.0	A-
LAW 5041.1	Contracts	Atiq	4.0	A
LAW 5081.3	Lawyering	Freed	2.0	A-
LAW 5151.3	Torts	Wendel	3.0	A-

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	16.0	16.0	16.0	16.0	16.0	16.0	3.6268
Cumulative	16.0	16.0	16.0	16.0	16.0	16.0	3.6268

**Spring 2020 (1/14/2020 - 5/11/2020)**

Due to the public health emergency, spring 2020 instruction was conducted exclusively online after mid-March and law school courses were graded on a mandatory Satisfactory/Unsatisfactory basis. Four law school courses were completed before mid-March and were unaffected by this change. Other units of Cornell University adopted other grading policies. Thus, letter grades other than S/U appear on some spring 2020 transcripts. No passing grade received in any spring 2020 course was included in calculating the cumulative merit point ratio.

LAW 5001.3	Civil Procedure	Gardner	3.0	SX
LAW 5061.1	Criminal Law	Garvey	3.0	SX
LAW 5081.7	Lawyering	Freed	2.0	SX
LAW 5121.3	Property	Underkuffler	4.0	SX
LAW 6401.1	Evidence	Weyble	3.0	SX

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	15.0	15.0	15.0	15.0	0.0	0.0	N/A
Cumulative	31.0	31.0	31.0	31.0	16.0	16.0	3.6268

**Fall 2020 (8/25/2020 - 11/24/2020)**

LAW 6131.1	Business Organizations	Hockett	3.0	B+
LAW 6264.1	Criminal Procedure - Investigations	Margulies	3.0	B+
LAW 6572.1	Introduction to Transactional Lawyering	Underberg	2.0	SX
LAW 6641.1	Professional Responsibility	Wendel	3.0	A
LAW 7599.101	New Rights, Cyberspace and Law	Yu	3.0	B+

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	14.0	14.0	14.0	14.0	12.0	12.0	3.4975
Cumulative	45.0	45.0	45.0	45.0	28.0	28.0	3.5714

**Spring 2021 (2/8/2021 - 5/7/2021)**

LAW 6011.1	Administrative Law	Rogers	3.0	B+
LAW 6101.1	Antitrust Law	Hay	3.0	B+
LAW 6331.1	Employment Law	Schwab	3.0	B+
LAW 6661.1	Constitutional Law of the European Union	Lasser	3.0	A-
LAW 7268.101	Faculty At Home Seminar: Challenging the Deep State	Lasser	1.0	SX

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	13.0	13.0	13.0	13.0	12.0	12.0	3.4150
Cumulative	58.0	58.0	58.0	58.0	40.0	40.0	3.5245

**Fall 2021 (8/24/2021 - 12/3/2021)**

LAW 6161.1	Comparative Law: Civil Law Traditions	Lasser	3.0	A
LAW 6241.1	Federal White Collar Crime	Garvey	3.0	A-
LAW 6421.1	Family Law	Bowman	3.0	A
LAW 6921.1	Trial Advocacy	Weyble	5.0	A-

	Total Attempted	Total Earned	Law Attempted	Law Earned	MPR Attempted	MPR Earned	MPR
Term	14.0	14.0	14.0	14.0	14.0	14.0	3.8114
Cumulative	72.0	72.0	72.0	72.0	54.0	54.0	3.5988

^ Dean's List

Total Hours Earned: 72

**Academic History**

\*\*\*This is Not an Official Transcript\*\*\*

Create Date: 12/24/2019 10:08:26

**General Information**

Student: Talbot, Spencer Ryan  
 PID: A12600257  
 Student Level: UN  
 College: Thurgood Marshall (frmly Third)  
 Majors: International Studies-Intl Bus / Political Sci/Compar Politics  
 Intended Degrees: Bachelor of Arts / Bachelor of Arts

**UCSD Degrees Awarded**

Award: BA  
 Term: SP19  
 College: Thurgood Marshall (frmly Third)  
 Department: Political Science  
 Department: International Studies Program  
 Major: Political Sci/Compar Politics  
 Major: International Studies-Intl Bus  
 Honor: Cum Laude  
 Conferred: 06/14/2019  
 Award Text: Degree Awarded with GPA of 3.811

**Cumulative Summary**

Grade Option	UC-Crdts Attm	Crdts Pssd	UC-GPA Crdts	UC-Grade Points	UC-GPA
Letter	187.00	187.00	187.00	712.70	3.811
P/NP	12.00	32.00	0.00	0.00	0.000
TOTAL	199.00	219.00	187.00	712.70	3.811

Total UCSD Upper Division Units Passed: 112.00

All credits are in quarter units. Cumulative summaries on this record may reflect adjustments for repeated courses and/or other adjustments made in accordance with UCSD academic policies.

**UCSD Undergraduate Courses by Term****Term: Spring Qtr 2019**

Subject	Course	Course Title	Units	Grade	Points	Repeat
INTL	190	Seminar/International Studies	4.00	A	16.00	
MGT	112	Global Business Strategy	4.00	A-	14.80	
MGT	121A	Innovation to Market A	4.00	A	16.00	

Term Credits Passed: 12.00 Term GPA: 3.900  
 Term Grade Points: 46.80 Academic Status: Graduated  
 Term GPA Credits: 12.00 Term Honors: Provost Honors

**Term: Winter Qtr 2019**

Subject	Course	Course Title	Units	Grade	Points	Repeat
HILD	11	East Asia & the West, 1279-1911	4.00	P	0.00	
POLI	100W	Politics and Education	4.00	A	16.00	
POLI	120C	Politics In France	4.00	A	16.00	
POLI	135	Comparative LGBT Politics	4.00	A	16.00	

Term Credits Passed: 16.00 Term GPA: 4.000  
 Term Grade Points: 48.00 Academic Status: Good Standing  
 Term GPA Credits: 12.00 Term Honors: Provost Honors

**Term: Fall Qtr 2018**

Subject	Course	Course Title	Units	Grade	Points	Repeat
INTL	101	Cult & Society/Intm'l Perspec	4.00	A	16.00	
JUDA	101	Introduction to Hebrew Texts	4.00	A	16.00	
MGT	105	Product Promotion & Brand Mgt	4.00	A	16.00	
MGT	172	Business Project Management	4.00	A-	14.80	

Term Credits Passed: 16.00 Term GPA: 3.925  
Term Grade Points: 62.80 Academic Status: Good Standing  
Term GPA Credits: 16.00 Term Honors: Provost Honors

**Term: Spring Qtr 2018**

Subject	Course	Course Title	Units	Grade	Points	Repeat
JUDA	3	Intermediate Hebrew Continued	5.00	A-	18.50	
MGT	164	Business and Org Leadership	4.00	A	16.00	
POLI	142K	Politics and Warfare	4.00	A	16.00	
RELI	188	Special Topics in Religion The Devil in Film	4.00	A	16.00	

Term Credits Passed: 17.00 Term GPA: 3.911  
Term Grade Points: 66.50 Academic Status: Good Standing  
Term GPA Credits: 17.00 Term Honors: Provost Honors

**Term: Winter Qtr 2018**

Subject	Course	Course Title	Units	Grade	Points	Repeat
INTL	102	Econ, Politics & Intn'l Change	4.00	A+	16.00	
JUDA	2	Intermediate Hebrew	5.00	A	20.00	
MGT	166	Corp Social Responsibility	4.00	A	16.00	

Term Credits Passed: 13.00 Term GPA: 4.000  
Term Grade Points: 52.00 Academic Status: Good Standing  
Term GPA Credits: 13.00 Term Honors: Provost Honors

**Term: Fall Qtr 2017**

Subject	Course	Course Title	Units	Grade	Points	Repeat
JUDA	1	Beginning Hebrew	5.00	A	20.00	
MGT	103	Product Marketing & Management	4.00	A-	14.80	
MGT	181	Enterprise Finance	4.00	A-	14.80	
POLI	130B	Politics/People's Rep of China	4.00	A	16.00	

Term Credits Passed: 17.00 Term GPA: 3.858  
Term Grade Points: 65.60 Academic Status: Good Standing  
Term GPA Credits: 17.00 Term Honors: Provost Honors

**Term: Sum Ses I 2017**

Subject	Course	Course Title	Units	Grade	Points	Repeat
POLI	103GS	The New Political Europe	4.00	A	16.00	
POLI	120GS	Politics Ireland/British Isle	4.00	A+	16.00	

Term Credits Passed: 8.00 Term GPA: 4.000  
Term Grade Points: 32.00 Academic Status:  
Term GPA Credits: 8.00

**Term: Spring Qtr 2017**

Subject	Course	Course Title	Units	Grade	Points	Repeat
POLI	100A	The Presidency	4.00	A	16.00	
POLI	103A	Calif Government & Politics	4.00	A	16.00	
POLI	136A	Nationalism & Ethnic Conflict	4.00	A	16.00	
SOCI	188I	Israeli-Palestinian Conflict	4.00	A	16.00	



Term Grade Points: 64.00 Academic Status: Good Standing  
Term GPA Credits: 16.00 Term Honors: Provost Honors

**Term: Winter Qtr 2017**

Subject	Course	Course Title	Units	Grade	Points	Repeat
ECON	4	Financial Accounting	4.00	A-	14.80	
MATH	10C	Calculus III	4.00	A	16.00	
MGT	5	Managerial Accounting	4.00	A	16.00	
TWS	22	Third World Literatures	4.00	P	0.00	

Term Credits Passed: 16.00 Term GPA: 3.900  
Term Grade Points: 46.80 Academic Status: Good Standing  
Term GPA Credits: 12.00 Term Honors: Provost Honors

**Term: Fall Qtr 2016**

Subject	Course	Course Title	Units	Grade	Points	Repeat
HINE	120	Middle East in the New Century	4.00	B+	13.20	
LTWL	180	Film Studies&Lit:Film History	4.00	A	16.00	
MATH	10B	Calculus II	4.00	B+	13.20	
POLI	120B	The German Political System	4.00	A	16.00	

Term Credits Passed: 16.00 Term GPA: 3.650  
Term Grade Points: 58.40 Academic Status: Good Standing  
Term GPA Credits: 16.00 Term Honors: Provost Honors

**Term: Spring Qtr 2016**

Subject	Course	Course Title	Units	Grade	Points	Repeat
BILD	22	Human Nutrition	4.00	P	0.00	
CHEM	11	The Periodic Table	4.00	A-	14.80	
DOC	3	Imagination	6.00	B+	19.80	
POLI	10D	Intro/Poli Sci:Amer Politics	4.00	A-	14.80	

Term Credits Passed: 18.00 Term GPA: 3.528  
Term Grade Points: 49.40 Academic Status: Good Standing  
Term GPA Credits: 14.00 Term Honors: Provost Honors

**Term: Winter Qtr 2016**

Subject	Course	Course Title	Units	Grade	Points	Repeat
DOC	2	Justice	6.00	B	18.00	
HINE	119	U.S. Mid-East Policy-Post WWII	4.00	A	16.00	
MUS	15	Popular Music	4.00	A	16.00	
POLI	12D	Intro/Poli Sci:Int'l Relations	4.00	A-	14.80	

Term Credits Passed: 18.00 Term GPA: 3.600  
Term Grade Points: 64.80 Academic Status: Good Standing  
Term GPA Credits: 18.00 Term Honors: Provost Honors

**Term: Fall Qtr 2015**

Subject	Course	Course Title	Units	Grade	Points	Repeat
DOC	1	Diversity	4.00	B+	13.20	
POLI	11D	Intro/Poli Sci:Compar Politics	4.00	B+	13.20	
POLI	30D	Political Inquiry	4.00	B+	13.20	
SIO	15	Natural Disasters	4.00	A	16.00	

Term Credits Passed: 16.00 Term GPA: 3.475  
Term Grade Points: 55.60 Academic Status: Good Standing  
Term GPA Credits: 16.00

**Transfer Credit**

Entity Name Dates Credit

**CAUTION: Transfer Course Disclaimer**

Substitution of Transfer Courses for UCSD requirements may be subject to additional checks or approvals. Colleges and Departments require additional approvals. Please see your College or Department for clarification. Please note: Transfer courses will display approximately 8 weeks after they are received on campus.

**Transfer Courses**

Subject	Course	Course Title Transferred From	Units	Grade	Term	Level	UCSD Approx
AP	AH5	United Sta Hist Advanced Placement Credit	8.00	P	SP14	LD	HILD APA HILD APB
AP	MA5	Math: Calc Ab Advanced Placement Credit	4.00	P	SP14	LD	MATH 20A
AP	EC3	Engl Lit Comp Advanced Placement Credit	8.00	P	SP15	LD	

**Academic Events****Event**

UC ENTRLVL WRITNG REQT SATISFD  
AMER HIST& INST REQT SATISFIED  
PHI BETA KAPPA HONOR SOCIETY

**Date**

09/10/2015  
12/04/2015  
06/24/2019

March 13, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

Dear Judge Liman:

I write on behalf of Spencer Talbot (JD expected 2022), who is applying to be your law clerk. I am delighted to write, because Spencer is a strong law student, a superb research assistant, and will make an excellent law clerk.

I first met Spencer when he was a student in my Employment Class in Spring 2021. It was a class of 21 students, which is a nice small enrollment that lets me get to know the students. Because of covid this class was conducted online, so I took extra steps to ensure student engagement. In particular, I had each student write eight short (2-4 page) memos focusing on a particular state, examining whether that state was following or departing from the general trends we discussed in class. Spencer was assigned California, even though he envisions his legal career centering in the northeast. California is generally known as a major generator of employment-law doctrine. I reviewed Spencer's memos in preparing this recommendation letter, and again found them to be excellent. The writing was crisp and clear, and the legal analysis was first-rate.

Based on my good impression of Spencer's abilities, I leapt on the opportunity to hire him when he applied to be my research assistant in the fall semester 2021. And what an excellent research assistant he has been, both individually and through his ability to work cooperatively with the other two research assistants on the project. My coauthors and I were updating our Employment Law casebook into its 7th edition. I assigned Spencer, among other chapters, one of the most complex areas that needed updating, Unemployment Insurance. As you know, the UI program was challenged--even upended--during Covid19, and Spencer's task was to incorporate into the text the many changes the federal government and various states had made.

Spencer and I met weekly. He was always thoroughly prepared. I was especially grateful for his talent along two dimensions: first, he could work independently and advance the project even when my schedule prevented me from giving clear directions; and second, once I made a decision; he implemented it with enthusiasm even when he has suggested another approach. Spencer has great attention to detail and does not get frustrated by roadblocks. He is very imaginative in his research and knows how to dig things out, and his range of knowledge is impressive. He is comfortable searching Bureau of Labor Statistics websites for esoteric unemployment data. But Spencer was also in charge of edits for the chapter on History of Employment at Will, and I had him look at developments in the Black Codes during Reconstruction and the implications for the at-will doctrine. He showed dexterity there also.

In demeanor, Spencer is calm, steady, and easy to work with. I asked why he wants to clerk for a judge, and he gives thoughtful responses, including that he eventually wants to be a litigator, but also looks forward to the mentoring relationship between judge and clerk.

I am confident that Spencer has the temperament that wears well during a year in chambers. He knows how to work independently and also be an excellent team player with fellow research assistants (or co-clerks). He writes clearly and easily and knows how to go the extra mile in assignments. He will be a credit to your chambers and to Cornell Law School.

Sincerely,

Stewart J. Schwab  
Jonathan and Ruby Zhu Professor of Law

Stewart Schwab - sjs15@cornell.edu - 607-255-3527

March 13, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

Dear Judge Liman:

I am writing in order to offer a very strong recommendation in favor of Spencer Talbot, who is applying for one of your clerkship positions. I got to know Spencer quite well during his time as a student at Cornell Law School, when he took two of the three courses I typically teach from year to year: "Comparative Law: Civil Law Systems" and "Constitutional Law of the European Union." As he received an A in the former and an A- in the latter, you can easily imagine what I think of his capacities as a student. I think he would make an exceptional clerk.

I first met Spencer last academic year when he took my EU course. He was particularly quick to catch – and keen to discuss – the procedural, substantive and ideological variation between assorted legal orders. He loved to analyze how assorted courts, political actors and litigants might deploy interpretive, structural, prudential, institutional, political or other resources to advance their interests in the complex and shifting European legal environment. He was always perfectly prepared and had thought through the complications and implications of the materials we were discussing. Simultaneously modest and quietly playful, he seemed to take active pleasure in working through the complexities and their real-world effects.

My very favorable impression only increased this past semester when Spencer took my Comparative Law course. Though still a little understated, his humor showed through ever more clearly, even as his professionalism held steady. Spencer is a fundamentally serious student who actually cares about legal materials. But he also takes pleasure in them, balancing his intelligence and diligence with dry wit and good cheer. It makes for a delightful combination. His exam was absolutely first rate: superbly organized, clearly written, thoroughly analyzed and argued.

In short, I believe Spencer to be an extremely promising young lawyer who should make an exceptionally good clerk. He is extremely diligent, highly intelligent, thoroughly prepared, analytically inclined and particularly congenial. His professional plans are directed at this point towards antitrust practice. But it is a little early to tell. What is quite clear is that he should really succeed in whatever professional endeavor he takes on: he has all the right attributes for making a first-rate attorney. Finally, I have found him to be not only deeply personally pleasant, but eminently teachable. He likes to learn and aims to live up to one's highest expectations.

As a result, I recommend him to you with confidence. He should really make an unusually good clerk; and I fully expect that you will be overjoyed with him and his work.

If you have any questions at all, please do not hesitate to contact me at your convenience.

Sincerely yours,

Mitchel Lasser

Mitchel Lasser - ml355@cornell.edu - 607-255-3383



## Cornell Law School

**KEIR M. WEYBLE**
*Clinical Professor of Law*

158 Hughes Hall

Ithaca, New York 14853-4901

Phone 607.255.3805 / 607.255.7193 (fax)

E-mail: kw346@cornell.edu

March 23, 2022

The Honorable Lewis J. Liman  
 United States District Court  
 for the Southern District of New York  
 Daniel Patrick Moynihan United States Courthouse  
 New York, NY 10007-1312

Dear Judge Liman:

It is my pleasure to recommend Spencer Talbot for a judicial clerkship. I first became acquainted with him during the Spring 2020 law school semester, though that acquaintance was unfortunately limited by the mid-semester pandemic shutdown. Our paths converged again when he took Trial Advocacy with me during the Fall 2021 semester, and the observations I offer here are based on that period.

Spencer was a very good student in the courses he took with me. While the Evidence course was large and afforded little opportunity for one-on-one interaction, I can say that Spencer was well prepared when called upon and made good contributions to classroom discussions. The positive first impression he made in that course was amplified and reinforced during his time in Trial Advocacy. The course takes students through a rigorous, semester-long sequence of skill-development lessons and exercises, and culminates with a full-day trial before a real trial judge. Success depends upon a student's commitment, capacity for sustained, week-after-week effort, and ability to aggregate and build upon concepts and skills as they are acquired. While it is not uncommon for students who generally do well in traditional classroom courses to come up somewhat short in that very different setting, Spencer was not in that category. He brought a potent blend of enthusiasm, intellect, and energy to the work, immersed himself in the exercises and the role of trial-lawyer-in-training, and turned in an impressively skillful, thoughtful, and consistent series of performances spanning the entire semester. When final grades were tallied, Spencer was a close third in a class of seventeen.

Having observed and interacted with Spencer, a few of his qualities merit special emphasis in connection with his candidacy for a clerkship. First, he is a quick study who can assimilate information rapidly, apply good judgment in real time, and react appropriately to changing circumstances. His success in that regard is due, at least in part, to the consistency and thoroughness of his preparation, which was readily apparent week after week in Trial Advocacy. He is also a willing recipient of constructive criticism. As naturally able and hard-working as he is, Spencer knows he is new to the legal profession, and he recognizes how much there is for him to learn through mentoring and exposure to new circumstances and experiences. I know he regards a judicial clerkship as a rich opportunity for that kind of learning and growth.

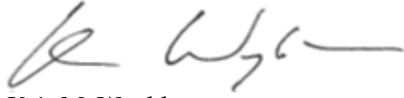




*The Honorable Lewis J. Liman*  
March 23, 2022  
Page 2

In sum, I recommend Spencer highly and without reservation. If I can provide any additional information, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Keir M. Weyble', with a stylized flourish at the end.

Keir M. Weyble  
*Clinical Professor of Law*



## **Writing Sample**

### **Spencer R. Talbot**

302 Mitchell St. | Ithaca, NY 14850  
[Srtalbot2@gmail.com](mailto:Srtalbot2@gmail.com) | (530) 601-0300

The attached Memorandum is a persuasive writing assignment I prepared for my first-year legal writing course, arguing fair use to resolve a summary judgment motion on a copyright infringement claim. Please note that this memorandum is my own work product and has not been substantially edited by another person.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

MO WILLEMS,	)	
	)	
	)	No. CIV-19-5128 (LGF)
Plaintiff,	)	
	)	
v.	)	
	)	
CENTER FOR THE CHILDBEARING	)	
YEAR & BEYOND, LLC,	)	
	)	
Defendant.	)	
	)	

DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF ITS  
MOTION FOR SUMMARY JUDGMENT

Spencer Talbot  
Hagrid & Hedwig, LLP  
9 Main Street  
Syracuse, New York  
(530) 601-0300  
*Attorney for Defendant*

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DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF ITS  
MOTION FOR SUMMARY JUDGMENT

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Center for the Childbearing Year & Beyond, LLC (Center) submits this Memorandum of Law in Support of its Motion for Summary Judgment.

### **INTRODUCTION**

For over a decade, low-income women have depended upon Center to help with at-risk pregnancies and promote family nutrition. To raise awareness for its services and encourage children to eat healthy, Center distributed free cookbooks in Binghamton, NY. These cookbooks feature drawings by local children adapting author and illustrator Mo Willems's characters, Gerald and Piggie. Willems claims these drawings violate his exclusive rights to the copyrighted characters. However, under the fair-use doctrine of the Copyright Act of 1976, this claim fails as a matter of law. 17 U.S.C. §107.

First, by adding unique visual characteristics for a new purpose, Center transformed Gerald and Piggie for a nonprofit, public-interest purpose. Second, Center used the likeness of Gerald and Piggie only enough to interest children. Finally, because Center targeted parents wanting to teach their children healthy eating, Center's use did not adversely affect Willems's actual and potential markets.

Accordingly, this Court should grant summary judgment for Center.

### **STATEMENT OF FACTS**

Center is a nonprofit, educational organization in Syracuse, NY that provides essential childbearing services to low-income families with at-risk pregnant women through its classes and Doula Care Program. (Answer ¶¶ 3–4.) To increase public awareness of and recruit volunteers for Center's programs, while encouraging parents to teach their children healthy-eating habits, Center created a cookbook—A Family Guide to Healthy Eating (the "Guide")—in 2018. (Bridges Dep. 4:8–17.) Center distributed the Guide for free to patrons at grocery stores and health clinics. (Answer ¶ 17.)

To make the Guide more engaging for children, Center included children's drawings of Mo Willems's characters Gerald and Piggie. (Bridges Dep. 3:18; Compl. Exs. D–E.) Gerald and Piggie are featured in many of Willems's works, including instructional activity books. (Compl. Ex. C.) Every Gerald and Piggie drawing by Willems contains consistent

characteristics, namely all-white backgrounds, friendship themes, gray and pink speech balloons, and disciplined illustrations that have only slightly changed over many years. (Compl. ¶¶ 8–10.) Willems has licensed his characters for many other products, for example, dolls and clothing. (*Id.* ¶ 25.)

Center provided the children illustrators with copies of Willems’s books I Really Like Slop! and Elephant & Piggie & Pigeon & Mo & You! for inspiration but instructed the children to “have fun and be creative.” (Bridges Dep. 3:3–7.) Willems promoted I Really Like Slop! through a YouTube video where he prepares “slop” by throwing out fruits and vegetables in favor of inedible objects such as shoes. (*Id.* 3:11–15.) Although the children’s depictions of Gerald and Piggie feature prominently throughout the Guide, each drawing contains distinct characteristics unique to the Guide like new dimensions and colors and the addition of background utensils and grass.

Center did not solicit a license to distribute the depictions. (*Id.* ¶ 16.) Even though Center received increased donations and course enrollments after distributing the Guide, Center used the money earned to fund its public-interest programs. (Bridges Dep. 4:1, 5:3–5.)

After Willems learned about the Guide from a parent at a book-signing event, Willems filed suit against Center for copyright infringement under the Copyright Act. Center now moves for summary judgment based on fair use.

### ARGUMENT

This Court should grant Center’s motion for summary judgment. Summary-judgment is appropriate when the “movant shows that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). While fair use is a mixed question of fact and law, courts decide fair use at the summary-judgment stage. *Blanch v. Koons*, 467 F.3d 244, 250 (2d Cir. 2006). When the movant meets their burden, the burden of production shifts to the nonmovant. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). In ruling on a motion for summary judgment, “the court ‘must draw all reasonable inferences and resolve all ambiguities in favor of the non-moving party.’” (citation omitted).” *Castle Rock Entm’t Inc. v. Carol Publ’g Grp.*, 150 F.3d 132, 138 (2d Cir. 1998).

Here, the evidence demonstrates that no reasonable jury could find for Willems.

**I. This Court Should Grant Center’s Motion for Summary Judgment Because Center’s Use of Willems’s Work is Fair Under the Copyright Act.**

Fair use permits a secondary user to reproduce copyrighted work “for purposes such as criticism, comment, ... [and] teaching” without the copyright owner’s approval. Copyright Act of 1976, 17 U.S.C. §107. Courts find fair use when (1) the secondary use transforms the original’s purpose and character; (2) the copyrighted work is factual rather than creative; (3) the amount and substantiality of the portion used is reasonable to convey the secondary work’s purpose; and (4) the secondary use does not negatively affect the original work’s actual or potential markets. *Id.* Because none of these factors are decisive, courts find fair use when the use advances copyright law’s goal of promoting the “Progress of Science and useful Arts.” *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605, 608 (2d Cir. 2006). Here, Center transformed Gerald and Piggie’s appearance and purpose in the Guide, reasonably used necessary amounts of Willems’s work to achieve the Guide’s educational purpose, and did not negatively affect any market for Willems’s work. Moreover, although Gerald and Piggie are creative works, when the use transforms the original’s purpose, the second factor is nominally useful. *Id.* at 612.

**A. Center transformed Willems’s work by redesigning Gerald and Piggie for the educational and publicly beneficial purposes of promoting nutrition and supporting families in need.**

Courts find a secondary use transforms the original’s purpose and character when the secondary use creates new “expressions, meanings, or messages” to transform, rather than supplant, the original work. *Cariou v. Prince*, 714 F.3d 694, 706 (2d Cir. 2013). Additionally, courts are more likely to find fair use when the new use accomplishes a nonprofit educational purpose rather than a commercial purpose. *Id.* at 708. The Supreme Court has recognized that not all commercial uses are presumptively unfair. *Id.* Commercialism’s weight in determining fair use diminishes when the new work is transformative and contributes to a nonprofit public interest. *Blanch*, 467 F.3d at 253.

In *Cariou*, an artist transformed edited copyrighted photos of Rastafarians by adding

new background features and restyling the images' size and colors. 714 F.3d at 706. While the original work depicted Rastafarians' natural beauty, the secondary work's hectic tone provided a new aesthetic to the photographs. *Id.*; *cf. N. Jersey Media Grp. v. Pirro*, 74 F. Supp. 3d 605, 615 (S.D.N.Y. 2015) (holding that a news program did not transform a photograph of 9/11 first responders through cropping, shrinking, captioning, or lowering the photo's resolution because a casual observer would believe that he is viewing the original photograph). Further, in *Blanch*, an artist using fragmented images of copyrighted photos for his museum-commissioned paintings transformed the photos because of the new work's different objective. 467 F.3d at 253. The original photo of a woman's legs conveyed sexuality for commercial advertisement, while the new work commented on mass media's social consequences. *Id.* Additionally, although the artist received payment, the art displayed in museums produced a noncommercial public benefit, which favors finding fair use. *Id.* at 254–56.

Here, the new colors, sizes, and facial expressions of Gerald and Piggie on the Guide's cover page transformed Willems's Gerald and Piggie. Although similar to Piggie's depiction in the activity book, the green Piggie inside a fish displayed on the Guide's fish stick's recipe page is transformative because it could not be confused as Willems's drawings by a casual viewer. Willems meticulously draws Piggie and has barely modified Piggie's appearance over the years. (Compl. ¶ 10). Adding background utensils and grass to the illustrations on the Guide's cover page also contrasts with Willems's signature all-white background. Moreover, the Guide's purpose of promoting healthy eating differs from Willems's books' purpose of teaching reading skills. In fact, while promoting *I Really Like Slop!*, Willems discourages healthy eating as seen on YouTube. (Bridges Dep. 3:11–15.)

Additionally, the increased donations and course enrollments Center received after distributing the Guide compares to the payments the artist in *Blanch* earned because the revenue served only to fund the beneficial social programs. Center did not directly sell the Guide, and donations received went only to fund childbearing services for low-income families and encourage healthy eating to benefit society. Thus, Center sufficiently transformed the purpose and character of Willems's copyrighted work.



1 B. Center used reasonable amounts and substantiality of Gerald and Piggie in the  
 2 Guide because the portion used was necessary to promote healthy eating to children  
 3 and did not copy the essence of Willems's work.

4 The amount and substantiality of the portion used by the secondary user is reasonable  
 5 when the secondary use of the original work's quantitative and qualitative features is necessary  
 6 to achieve the new work's purpose. *Blanch*, 467 F.3d at 257. Therefore, if necessary to achieve  
 7 the new work's purpose, copying an entire work is reasonable. *Bill Graham*, 448 F.3d at 613.

8 In *Bill Graham*, the copying of an entire concert poster was reasonable to archive a  
 9 historical event because the full poster was necessary to help the viewer recognize the historical  
 10 artifact. 448 F.3d at 613. Further, in *Blanch*, the artist reasonably used portions of a copyrighted  
 11 photo because the new work did not copy aspects that reflected the original photo's  
 12 individualized expression. 467 F.3d at 257–58. The original photo's essence stemmed from the  
 13 setting and background features of the photo, not the woman's legs, which the artist used. *Id.*;  
 14 *cf. Castle Rock*, 150 F.3d at 144 (holding that a trivia game unreasonably used a copyrighted  
 15 television show's jokes reflecting the show's "nothingness" essence to serve the same  
 16 entertainment purpose).

17 In this case, like the defendant copying recognizable posters for biographical purposes  
 18 in *Bill Graham*, Center copied necessary amounts of Gerald and Piggie for children to notice  
 19 the Guide and be receptive to its suggestions for healthy eating. The use is also reasonable  
 20 because Center did not copy the essence of Willems's original work. Similar to how the setting  
 21 and background features of the photo in *Blanch* reflected the original photographer's message,  
 22 Willems's use of speech balloons achieves his books' purpose of teaching reading skills. The  
 23 Guide's lack of speech balloons reflects Center's selectivity in using Willems's work. Unlike  
 24 how the secondary user's trivia questions in *Castle Rock* unreasonably shared the  
 25 "nothingness" essence and entertainment purpose with the television show, the Guide displayed  
 26 distinct characteristics for Gerald and Piggie and introduced a new purpose of teaching healthy  
 27 eating. Although Willems licensed his characters for other uses, such derivatives are merely a  
 28 symptom of the books' popularity. The characters are principally the medium used to express  
 Willems's literacy goal. Therefore, the amount and substantiality of the portion used was

reasonable.

C. Center did not negatively affect any potential market for Willems's work because the Guide's target market of parents looking to encourage their children to eat healthy differs from the market for Willems's work.

A secondary use's effect on the copyrighted work's market favors fair use when the new work does not usurp the original's market and, if the new work becomes widespread, it does not negatively affect any potential market of the copyrighted work or its potential licensed derivatives. *Bill Graham*, 448 F.3d at 613. In other words, this factor favors fair use when the two works target different audiences and are of different natures. *Cariou*, 714 F.3d at 709. Although a copyright owner is entitled to royalties from the original work and its derivatives, courts limit the measurement of harm to "traditional, reasonable, or likely to be developed markets" because every fair use involves some royalty loss. *Bill Graham*, 448 F.3d at 614. A finding of fair use is appropriate when the public benefit gained from upholding fair use outweighs the copyright owner's potential gain from prohibiting the secondary use. *Rogers v. Koons*, 960 F.2d 301, 311 (2d Cir. 1992).

The transformed Rastafarian images at issue in *Cariou* did not usurp the original work's market because the original work did not appeal to wealthy collectors to whom the new work was marketed. 714 F.3d at 709. Similarly, in *Bill Graham*, even if the biographical work became widespread, it would not adversely affect any of the original work's likely developed markets because the new work's documentary purpose was transformatively different from the original's publicity purpose. 448 F.3d at 614. Conversely, in *Rogers*, a sculptor was found to have usurped an owner's derivative market for a copyrighted painting by molding a sculpture inspired by the painting to intentionally profit from exploiting the painting. 960 F.2d at 312. The financial harm to the copyright owner also exceeded any public benefit from allowing the sculptor to sell his art, which disfavored finding fair use. *Id.*

Center's market for the Guide, like the new market for the transformed images in *Cariou*, fundamentally differs from Willems's markets. Willems targets novice readers, while Center markets the Guide to parents seeking to encourage their children to eat healthy and thus does not substitute for Willems's work. Further, the Guide's purpose did not usurp a likely

1 derivative market of Willems's work for the same reason the *Bill Graham* court found the new  
2 work's biographical purpose was not a likely derivative of the poster's advertising function. In  
3 this case, a promotional video by Willems for I Really Like Slop! showing "old shoes" being  
4 substituted for healthy food indicates that Willems did not intend to use his characters to  
5 encourage healthy eating. (Bridges Dep. 3: 10–15.) Additionally, unlike the sculptor in *Rogers*,  
6 who intended to profit from the secondary use, Center's nonprofit public-interest purpose to  
7 provide childbearing services to low-income families through donations outweighs any harm to  
8 Willems from not receiving a licensing fee. Thus, Center did not usurp any potential markets  
9 for Willems's work.

### 10 CONCLUSION

11 For the foregoing reasons, Center respectfully requests that this Court grant Center's  
12 Motion for Summary Judgment.

## Applicant Details

First Name	David
Last Name	Tannenbaum
Citizenship Status	U. S. Citizen
Email Address	<a href="mailto:drt57@georgetown.edu">drt57@georgetown.edu</a>
Address	<div> <div>Address</div> <div> <div>Street</div> <div>61 Pierce St NE Apt 1242</div> <div>City</div> <div>Washington DC</div> <div>State/Territory</div> <div>District of Columbia</div> <div>Zip</div> <div>20002</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	7038886398

## Applicant Education

BA/BS From	University of Michigan-Ann Arbor
Date of BA/BS	December 2015
JD/LLB From	Georgetown University Law Center
	<a href="https://www.nalplawschools.org/employer_profile?FormID=961">https://www.nalplawschools.org/employer_profile?FormID=961</a>
Date of JD/LLB	May 20, 2022
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	American Criminal Law Review
Moot Court Experience	No

## Bar Admission

## Prior Judicial Experience

Judicial Internships/  
Externships      **Yes**  
Post-graduate Judicial  
Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Gornstein, Irv  
ilg@law.georgetown.edu  
DeLaurentis, Frances  
fcd@law.georgetown.edu  
Boynton, Kyle  
Kyle.Boynton@usdoj.gov

**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

**David Tannenbaum**  
61 Pierce Street NE, Washington, D.C. 20002  
(703) 888-6398 | drt57@georgetown.edu

March 2, 2022

The Honorable Lewis J. Liman  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007

Dear Judge Liman:

I am a third-year student at Georgetown University Law Center, and I am writing to offer my application for a 2024 term clerkship in your chambers.

I am confident that my grit, attention to detail, and ability to multitask will allow me to contribute to the work of your chambers. I relied on my grit, a combination of hard work and resilience, while interning with the U.S. Attorney's Office for the District of New Jersey when I successfully argued the Government's position in an evidentiary hearing regarding a petitioner's habeas motion. Hard work and a willingness to labor beyond the set hours of the internship were essential to my preparation for the hearing, which included witness interviews, drafting direct and cross examination outlines, and researching the law and facts of the case. My ability to accept supervisor feedback and be resilient when faced with unexpected developments was critical at the hearing when I presented the case, responded to objections, and conducted redirect.

My attention to detail was essential to my work as a judicial extern in the chambers of the Honorable Reggie B. Walton, U.S. District Court for the District of Columbia. I was tasked with drafting a bench memo for a Title VII case that presented several legal issues. My ability to research and analyze the case efficiently, clearly identify the relevant facts and controlling law, and present my findings succinctly and accurately allowed me to succeed on this assignment.

Finally, my representation of a client seeking asylum in the United States through the Center for Applied Legal Studies Clinic at Georgetown honed my ability to multitask. My partner and I were responsible for managing all aspects of our client's case. As part of our representation, we conducted regular client meetings, drafted client and witness declarations, identified and compiled country condition reports, and prepared legal documents such as a legal brief for the case. Given the often competing deadlines of these various tasks, the ability to stay organized and work on multiple tasks concurrently was essential to preparing a strong case for our client.

I have enclosed my resume, law school transcript, undergraduate transcript, writing sample, and recommendation letters in this packet. Please let me know if I can provide any additional information. Thank you for your consideration.

Respectfully,  
David Tannenbaum

**DAVID TANNENBAUM**

61 Pierce Street NE, Washington, DC 20002 • (703) 888-6398 • drt57@georgetown.edu

**EDUCATION****GEORGETOWN UNIVERSITY LAW CENTER****Washington, DC****Juris Doctor****Expected May 2022**

GPA: 3.84

Journal: *American Criminal Law Review*, Executive Editor

Honors: Dean's List Spring 2021, Fall 2020; Law Fellow; CALI Award for Justice &amp; Accountability Class Paper

Clinic: Center for Applied Legal Studies (Fall 2021)

Activities: American Constitution Society, Senior Advisor; Home Court; Jewish Law Students Association

**UNIVERSITY OF MICHIGAN****Ann Arbor, MI****Bachelor of Arts, with Distinction, Public Policy****December 2015**

GPA: 3.84

Honors: Phi Beta Kappa

**EXPERIENCE****HUGHES HUBBARD & REED LLP****Washington, DC****Associate****Expected Fall 2022****UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF NEW JERSEY****Camden, NJ****Legal Intern****June 2021 – July 2021**

- Conducted direct- and cross-examination in an evidentiary hearing for a § 2255 motion to vacate, successfully argued the Government's position in a detention hearing, and represented the Government in an initial appearance
- Composed the 'Analysis' section for a brief responding to defendant's Compassionate Release motion, performed legal research, and attended court proceedings, proffers, and a declination presentation

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA****Washington, DC****Judicial Extern for the Honorable Reggie B. Walton****August 2020 – November 2020**

- Drafted a bench memorandum regarding defendant's 12(b)(6) motion to dismiss in a Title VII case and assisted in preparing the subsequent order for the motion
- Researched clerks' legal questions and proofread memorandum opinions to ensure Bluebook compliance

**U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION****Washington, DC****Criminal Section Intern****June 2020 – August 2020**

- Prepared a memorandum analyzing whether a defendant's offense of conviction constituted a predicate felony under the felony murder doctrine, drafted a *motion in limine* to preclude arguments regarding potential penalties, and performed legal research to assist attorneys with evaluating the admissibility of evidence
- Analyzed case law and prepared summaries on the legal status of a specific civil right in each circuit and the potential for litigation pursuant to that right

**GEORGETOWN UNIVERSITY LAW CENTER – PROFESSOR IRV GORNSTEIN****Washington, DC****Research Assistant****May 2020 – August 2020**

- Summarized legal issue(s) and arguments in cases set to be heard during the October 2020 U.S. Supreme Court term

**SCHRAYER & ASSOCIATES****Washington, DC****Associate****March 2016 – June 2019**

- Created background memoranda, stakeholder analysis, and strategic roadmaps for clients' federal and state advocacy campaigns and drafted talking points and speeches for President & CEO
- Collaborated with team members in creating strategic communications materials including talking points, digital newsletters, and social media content

**INTERESTS**

- Road trips (completed cross-country U.S. trip) & U.S. History

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: David Ross Tannenbaum  
GUID: 800066870

Course Level: Juris Doctor

Entering Program:

Georgetown University Law Center  
Juris Doctor  
Major: Law

Subj Crs Sec Title Crd Grd Pts R

----- Fall 2019 -----

LAWJ 001 95 Civil Procedure 4.00 A- 14.68

David Hyman

LAWJ 002 95 Contracts 4.00 A- 14.68

Urska Velikonja

LAWJ 004 53 Constitutional Law I: 3.00 B+ 9.99

The Federal System

Paul Smith

LAWJ 005 50 Legal Practice: 2.00 IP 0.00

Writing and Analysis

Frances DeLaurentis

Dean's List Fall 2019

EHrs QHrs QPts GPA

Current 11.00 11.00 39.35 3.58

Cumulative 11.00 11.00 39.35 3.58

Subj Crs Sec Title Crd Grd Pts R

----- Spring 2020 -----

LAWJ 003 51 Criminal Justice 4.00 P 0.00

Irving Gornstein

LAWJ 005 50 Legal Practice: 4.00 P 0.00

Writing and Analysis

Frances DeLaurentis

LAWJ 007 95 Property 4.00 P 0.00

Madhavi Sunder

LAWJ 008 95 Torts 4.00 P 0.00

John Hasnas

LAWJ 1323 50 International Law, 3.00 P 0.00

National Security, and

Human Rights

Milton Regan

LAWJ 611 13 Questioning Witnesses 1.00 P 0.00

In and Out of Court

Michael Williams

Mandatory P/F for Spring 2020 due to COVID19

EHrs QHrs QPts GPA

Current 20.00 0.00 0.00 0.00

Annual 29.00 11.00 39.35 3.58

Cumulative 31.00 11.00 39.35 3.58

-----Continued on Next Column-----

Subj Crs Sec Title Crd Grd Pts R

----- Fall 2020 -----

LAWJ 1491 01 Externship I Seminar NG

(J.D. Externship

Program)

Sandeep Prasanna

LAWJ 1491 119 ~Seminar 1.00 A 4.00

Sandeep Prasanna

LAWJ 1491 121 ~Fieldwork 3cr 3.00 P 0.00

Sandeep Prasanna

LAWJ 165 09 Evidence 4.00 A 16.00

Tanina Rostain

LAWJ 264 05 Labor Law: Union 3.00 A 12.00

Organizing, Collective

Bargaining, and Unfair

Labor Practices

Harold Datz

LAWJ 536 11 Legal Writing Seminar: 3.00 A 12.00

Theory and Practice

for Law Fellows

Frances DeLaurentis

Dean's List Fall 2020

EHrs QHrs QPts GPA

Current 14.00 11.00 44.00 4.00

Cumulative 45.00 22.00 83.35 3.79

Subj Crs Sec Title Crd Grd Pts R

----- Spring 2021 -----

LAWJ 1334 09 Justice and 2.00 A 8.00

Accountability for

International Atrocity

Crimes: Bridging

Theory and Practice

Seminar

Jane Stromseth

LAWJ 1349 08 Administrative Law 3.00 A 12.00

Lisa Heinzerling

LAWJ 1714 08 Labor Law and the 2.00 A 8.00

Changing US Workforce

Seminar

Mark Gaston Pearce

LAWJ 215 05 Constitutional Law II: 4.00 A 16.00

Individual Rights and

Liberties

Girardeau Spann

LAWJ 536 11 Legal Writing Seminar: 2.00 A 8.00

Theory and Practice

for Law Fellows

Kristen Tiscione

Dean's List Spring 2021

EHrs QHrs QPts GPA

Current 13.00 13.00 52.00 4.00

Annual 27.00 24.00 96.00 4.00

Cumulative 58.00 35.00 135.35 3.87

-----Continued on Next Page-----



This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: David Ross Tannenbaum  
GUID: 800066870

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Fall 2021 -----							
LAWJ	1750	09	Police Accountability Seminar	2.00	A	8.00	
LAWJ	361	03	Christy Lopez Professional Responsibility	2.00	A	8.00	
LAWJ	500	06	Stuart Teicher Center for Applied Legal Studies		NG		
LAWJ	500	30	Andrew Schoenholtz ~Legal Drafting		A-		
LAWJ	500	81	~Advocacy	4.00	A-	14.68	
LAWJ	500	82	~~Classroom Work	3.00	A-	11.01	
LAWJ	500	83	~~Clinical Skills	3.00	A-	11.01	
				EHrs	QHrs	QPts	GPA
Current				14.00	14.00	52.70	3.76
Cumulative				72.00	49.00	188.05	3.84
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Spring 2022 -----							
LAWJ	1687	05	White Collar Criminal Practice: International Scandal Investigations (Week One Teaching Fellows)	1.00	NR	0.00	
In Progress:							
LAWJ	121	09	Corporations	4.00	In Progress		
LAWJ	1245	09	Trial Practice and Applied Evidence	3.00	In Progress		
LAWJ	1322	05	Civil Rights Statutes and the Supreme Court Seminar	2.00	In Progress		
LAWJ	178	05	Federal Courts and the Federal System	3.00	In Progress		
----- Transcript Totals -----							
				EHrs	QHrs	QPts	GPA
Current				0.00	0.00	0.00	0.00
Annual				14.00	14.00	52.70	3.76
Cumulative				72.00	49.00	188.05	3.84
----- End of Juris Doctor Record -----							

THE UNIVERSITY OF MICHIGAN – ANN ARBOR

Unofficial Transcript - Not an Official Transcript

Tannenbaum,David Ross  
UM ID: 54815006 UIC: 2094356403  
Uniqname: DRTANN

Page 1  
Date: Jun 10, 2021

Citizen: U.S. Citizen							Winter 2013	Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
							AMCULT	337 American Blues Music	A	3.00	3.00	3.00	12.00
							ECON	101 Principle Econ I	B	4.00	4.00	4.00	12.00
							POLSCI	389 Topics	A-	3.00	3.00	3.00	11.10
							The History of American Foreign Policy						
							SPANISH	231 Second Year Span	A-	4.00	4.00	4.00	14.80
							Term Total	GPA: 3.564		14.00	14.00	14.00	49.90
							Cumulative Total	GPA: 3.675			29.00	58.00	106.60
Tannenbaum,David Ross (703) 888-6398							Summer 2013	Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
10828 Fieldwood Dr.							Transfer Course Credit	Northern Virginia Cmty College					
Fairfax, VA 22030							ECON	102 Principle Econ II	T	0.00	0.00	3.00	0.00
United States							Undergraduate L S & A						
Previous Names:							Transfer Credit Accepted:						
Tannenbaum,David											0.00	2.00	0.00
University of Michigan Degrees Awarded							Fall 2013	Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
School/College: Public Policy							CICS	101 Int to Intl Studies	A	3.00	3.00	3.00	12.00
Major: Public Policy							POLSCI	389 Topics	A	3.00	3.00	3.00	12.00
Degree: Bachelor of Arts, With Distinction							Congress and the Presidency						
Awarded: 23-Dec-2015							PUBPOL	201 Systematic Thinking	A+	4.00	4.00	4.00	16.00
							SPANISH	232 Second Year Span	A-	4.00	4.00	4.00	14.80
							Term Total	GPA: 3.914		14.00	14.00	14.00	54.80
							Cumulative Total	GPA: 3.753			43.00	74.00	161.40
Fall 2012 Undergraduate L S & A Grade Hours MSH CTP MHP							Winter 2014	Undergraduate L S & A	Grade	Hours	MSH	CTP	MHP
Transfer Test Credit							PHYSICS	210 Energy	A	3.00	3.00	3.00	12.00
Advanced Placement							RELIGION	277 Lnd Israel-Palestine	A	4.00	4.00	4.00	16.00
ENGCMPCTC 101X Departmental T 0.00 0.00 3.00 0.00							STATS	250 Intr Stat&Data Anlys	B+	4.00	4.00	4.00	13.20
ENGLISH 101X Departmental T 0.00 0.00 3.00 0.00							UC	254 Sophomore Seminar ID	A	3.00	3.00	3.00	12.00
ENVIRON 201 Ecological Issues T 0.00 0.00 4.00 0.00							History/Memory/Trauma in Comparative Perspective						
GEOG 101X Departmental T 0.00 0.00 3.00 0.00							Term Total	GPA: 3.800		14.00	14.00	14.00	53.20
HISTORY 101X Departmental T 0.00 0.00 4.00 0.00							Cumulative Total	GPA: 3.764			57.00	88.00	214.60
HISTORY 103X Departmental T 0.00 0.00 4.00 0.00													
POLSCI 111 Intro Amer Pol T 0.00 0.00 4.00 0.00													
POLSCI 140 Int Compar Pol T 0.00 0.00 4.00 0.00													
Undergraduate L S & A													
Transfer Credit Accepted:											0.00	29.00	0.00
Fall 2012 Undergraduate L S & A Grade Hours MSH CTP MHP													
AAS 103 Soc Sci Sem A- 3.00 3.00 3.00 11.10													

THE UNIVERSITY OF MICHIGAN – ANN ARBOR

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Tannenbaum, David Ross

UM ID: 54815006 UIC: 2094356403

Uniqname: DRTANN

Page 2

Date: Jun 10, 2021

Fall 2014		Undergraduate Public Policy		Grade	Hours	MSH	CTP	MHP	Fall 2014		Undergraduate Public Policy		Grade	Hours	MSH	CTP	MHP
Transfer Test Credit									ENVIRON	201	Ecological Issues	A+	4.00	4.00	4.00	16.00	
Advanced Placement									PUBPOL	320	Politics & Pub Pol	A	4.00	4.00	4.00	16.00	
ENGCMPCTC	101X	Departmental	T	0.00	0.00	3.00	0.00		PUBPOL	330	Microeconomics	A+	4.00	4.00	4.00	16.00	
ENGLISH	101X	Departmental	T	0.00	0.00	3.00	0.00		PUBPOL	495	Policy Seminar	A	4.00	4.00	4.00	16.00	
ENVIRON	201	Ecological Issues	T	0.00	0.00	0.00	0.00				Dangerous Peacemaking						
GEOG	101X	Departmental	T	0.00	0.00	3.00	0.00		Term Total	GPA: 4.000			16.00	16.00	16.00	64.00	
HISTORY	101X	Departmental	T	0.00	0.00	4.00	0.00		Cumulative Total	GPA: 3.816				73.00	100.00	278.60	
HISTORY	103X	Departmental	T	0.00	0.00	4.00	0.00										
POLSCI	111	Intro Amer Pol	T	0.00	0.00	4.00	0.00		Winter 2015	Undergraduate Public Policy		Grade	Hours	MSH	CTP	MHP	
POLSCI	140	Int Compar Pol	T	0.00	0.00	4.00	0.00		Transfer Course Credit		Anglo-America Vysoka Skola, o.p.s.						
									COMM	201X	Departmental	T	0.00	0.00	3.00	0.00	
Fall 2014	Undergraduate Public Policy		Grade	Hours	MSH	CTP	MHP		HISTART	101X	Departmental	T	0.00	0.00	3.00	0.00	
Transfer Course Credit									INTERID	301X	Interdepartmental Interdepart	T	0.00	0.00	3.00	0.00	
AAS	103	Soc Sci Sem	A-	0.00	3.00	3.00	11.10		POLSCI	301X	Departmental	T	0.00	0.00	3.00	0.00	
AMCULT	337	American Blues Music	A	0.00	3.00	3.00	12.00	Undergraduate Public Policy									
ECON	101	Principle Econ I	B	0.00	4.00	4.00	12.00	Transfer Credit Accepted:									
HISTORY	195	Writing of Hist	A-	0.00	4.00	4.00	14.80										
HISTORY	374	The Sixties	A	0.00	4.00	4.00	16.00										
INTLSTD	101	Int to Intrl Studies	A	0.00	3.00	3.00	12.00	Winter 2015	Undergraduate Public Policy		Grade	Hours	MSH	CTP	MHP		
PHYSICS	210	Energy	A	0.00	3.00	3.00	12.00	CIC	301	Consortium	##	0.00	0.00	0.00	0.00		
POLSCI	389	Topics	A	0.00	3.00	3.00	12.00	Term Total				0.00	0.00	0.00	0.00		
POLSCI	389	Topics	A-	0.00	3.00	3.00	11.10	Cumulative Total		GPA: 3.816			73.00	112.00	278.60		
PUBPOL	201	Systematic Thinking	A+	0.00	4.00	4.00	16.00										
RELIGION	277	Lnd Israel-Palestine	A	0.00	4.00	4.00	16.00	Fall 2015	Undergraduate Public Policy		Grade	Hours	MSH	CTP	MHP		
SPANISH	103	Review-Elementary	A-	0.00	4.00	4.00	14.80	PUBPOL	422	Cong&State Legis	A	4.00	4.00	4.00	16.00		
SPANISH	231	Second Year Span	A-	0.00	4.00	4.00	14.80	PUBPOL	475	Topics in Pub Pol	A+	3.00	3.00	3.00	12.00		
SPANISH	232	Second Year Span	A-	0.00	4.00	4.00	14.80	Running, Serving and Leading									
STATS	250	Intr Stat&Data Anlys	B+	0.00	4.00	4.00	13.20	PUBPOL	495	Policy Seminar	A	4.00	4.00	4.00	16.00		
UC	254	Sophomore Seminar ID	A	0.00	3.00	3.00	12.00	Drugs & Terrorism									
									Term Total		GPA: 4.000		11.00	11.00	11.00	44.00	
									Cumulative Total		GPA: 3.840			84.00	123.00	322.60	
Fall 2014	Undergraduate Public Policy		Grade	Hours	MSH	CTP	MHP										
Transfer Course Credit		Northern Virginia Cmty College															
ECON	102	Principle Econ II	T	0.00	0.00	3.00	0.00										
Undergraduate Public Policy									Academic Statistics for Undergraduate Public Policy								
Transfer Credit Accepted:									Total to Date		GPA: 3.840			84.00	123.00	322.60	

## THE UNIVERSITY OF MICHIGAN – ANN ARBOR

Unofficial Transcript - Not an Official Transcript

Tannenbaum, David Ross

UM ID: 54815006 UIC: 2094356403

Uniquename: DRTANN

Page 3

Date: Jun 10, 2021

## Academic Statistics for Undergraduate L S &amp; A

Total to Date GPA: 3.764

MSH CTP MHP

57.00 88.00 214.60

## Program Action History: Lit, Sci, and the Arts UG Deg

09/01/2014 Discontinuation

LSA Undeclared

04/01/2012 Matriculation

LSA Undeclared

## Honors, Non-Degree

12/20/2012 University Honors

05/02/2013 University Honors

12/20/2013 University Honors

05/01/2014 University Honors

12/19/2014 University Honors

04/03/2016 Phi Beta Kappa

## Academic Previous Experience

Northern Virginia Cmty College VA, United States

W T Woodson High School VA, United States

High School Diploma 06/14/2012

Anglo-Americka Vysoka Skola, o.p.s. , Czech Republic

End of Unofficial Transcript



Georgetown Law  
Supreme Court Institute  
600 New Jersey Avenue, NW  
Washington, DC 20001

March 08, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

Dear Judge Liman:

I am a Professor of Law at the Georgetown Law Center and the Executive Director of the Supreme Court Institute. David Tannenbaum was a student in one of my classes and served as one of my summer research assistants. Based on my experience with David, I highly recommend him for a clerkship.

David first came to my attention as a student in my first-year Criminal Justice Class. I always select my summer RAs from my that class, and I look for the students whose class participation is exceptional. David was one of those students. He was always well-prepared and offered valuable insights that escape most other students. In that year, classes were graded on a pass-fail basis. But had they not been, I am certain David would have gotten one of the top grades. Throughout the term, he demonstrated complete mastery of the material.

As one my four summer research assistants, David's job was to prepare draft summaries of cases that the Supreme Court had agreed to hear in the following term. Many of the cases fell into complex areas of the law as to which my RAs had no prior experience. David's summaries were outstanding. They displayed a perfect grasp of the essential issue in the case and were presented in a way that anyone could easily digest. David's summaries were also easy to edit. His special talent was providing the most tightly worded summaries without sacrificing anything of value.

David is also exceptionally well-prepared for a clerkship. He maintains a 3.87 average, placing him in the top 10% of the class. He is Executive Editor of the American Criminal Law Review. He also interned for Judge Walton in the U.S. District Court for the District of Columbia, for the U.S. Attorneys' Office for the District of New Jersey, and for the Civil Rights Division at Main Justice. After graduation, David will become an Associate at Hughes Hubbard & Reed.

Finally, based on my experience with David I am confident he could fit into any chambers. He is hard-working, poised under pressure, and easy to get along with. In sum, I strongly recommend David for a clerkship.

Sincerely,

Irv Gornstein  
Professor of Law  
Executive Director, Supreme Court Institute

Irv Gornstein - ilg@law.georgetown.edu

Georgetown Law  
600 New Jersey Avenue, NW  
Washington, DC 20001

March 08, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

Dear Judge Liman:

I am writing to recommend enthusiastically Mr. David Tannenbaum for a judicial clerkship with your chambers. Mr. Tannenbaum was a student in my first year Legal Practice course in 2019-20 and was competitively selected to be one of my Law Fellows for the 2020-21 academic year. As such, he was a student in my upper level Law Fellow writing seminar during the fall 2020 semester (I was on sabbatical in the spring 2021 semester). Additionally, Mr. Tannenbaum served as my research assistant during the summer of 2021 and was selected to be a Teaching Fellow for my January 2022 Week One class: White Collar Criminal Practice: International Scandal Investigations. As one of my Law Fellows, Mr. Tannenbaum helped me teach the first year required Legal Practice: Writing and Analysis class. As a Week One Teaching Fellow, he helped facilitate our simulation class. During the past two and a half years, I had the opportunity to observe Mr. Tannenbaum during our weekly two hour classes, conference individually with him many times throughout the year, and work very closely with him on a daily basis. I witnessed his research and writing abilities, observed his public speaking and presentation skills, discussed his career goals and followed his engagement with fellow students. Based on these interactions with Mr. Tannenbaum, the consistently high quality of his written work product, and his demonstrated work ethic, I believe he would be an asset to your chambers.

During my twenty-three years teaching law students, and my prior experience as a litigation partner in a major D.C. law firm, I have had the opportunity to work with a number of impressive young lawyers and law students. I count David Tannenbaum among that number. He is dedicated to honing his craft as a lawyer and to using his law degree in the service of others. Indeed, his resume speaks to his commitment to public service. Last summer, he interned with the United States Attorney's Office in the District of New Jersey. Previously, he was a judicial extern for the Honorable Reggie B. Walton, United States District Court for the District of Columbia, and he was an intern in the Criminal Section of the Civil Rights Division of the U.S. Department of Justice. Each of these internships exposed Mr. Tannenbaum to different aspects of the U.S. legal system, provided him with an opportunity to review the written work of and observe the advocacy skills of lawyers engaged in high stakes litigation, and allowed him to debate legal issues and concepts with clerks, other interns, and supervisors. Moreover, these experiences have allowed him to hone his craft and provided him with opportunities to grow as a lawyer, including the ability to conduct direct and cross examination in an evidentiary hearing last summer.

Mr. Tannenbaum has impressed me as extremely diligent and poised, someone who cares deeply about people, and someone who demonstrates a sharp intellect and curious mind. He struggled initially with transitioning from his prior policy writing to legal writing, and he came to my office seeking instruction and clarification. Unlike others, however, Mr. Tannenbaum came prepared, with specific and pointed questions. He had assessed his weaknesses and sought directed help. Throughout the course of the year, his writing improved considerably and he ended the year as one of the stronger writers in my class. As a part of the fall semester of the Legal Practice course, students are required to conduct extensive research and draft at least two predictive office memoranda. In the spring semester, students write a draft and then revise an appellate brief on two issues of constitutional law. At the end of each semester, students complete a take-home examination that requires them to conduct independent research and draft a predictive memo in the fall, and a persuasive brief in the spring. Mr. Tannenbaum's basic writing skills were solid from the outset and he had strong research skills. His ability to set forth a detailed analytical paradigm grounded in the law and incorporating legal reasoning developed over the course of the year as he took advantage of all of the writing opportunities to improve his analysis and legal writing. The switch to all virtual learning and the decision to convert to mandatory pass/fail grading for the spring 2020 semester prevented me from providing Mr. Tannenbaum with a grade in the course. Nonetheless, he performed quite well on the fall take home exam and his work product consistently improved throughout the year. He was producing well-researched and well-written legal documents that would have placed him in at least the top fifteen percent of the class by the spring. Unfortunately, he has no grade to reflect such stellar performance.

Mr. Tannenbaum further developed his research and legal writing skills last year by serving as a Law Fellow. As a Law Fellow, Mr. Tannenbaum was selected through a highly competitive process that included personal interviews and submission of a transcript, writing sample, formal application, and recommendations. Mr. Tannenbaum was selected because of his demonstrated excellence in legal research and legal writing, strong intellect, engaging and mature personality, and interest in helping to teach new law students the intricacies of legal thought and expression. Already a strong writer, I am delighted to note that his writing improved during his Law Fellow year, enhancing his already strong analytical and research skills. As a Law Fellow, Mr. Tannenbaum was required to provide detailed comments and feedback on multiple drafts of several writing assignments, and to conduct individual conferences with ten students on each draft of multiple documents. Mr. Tannenbaum's well written comments explained analytical weaknesses, pinpointed logical leaps, and noted research gaps in clear and supportive language. He was able to tell students not only what was missing in their analysis but to offer several ways to correct

Frances DeLaurentis - fcd@law.georgetown.edu

their writing problems. His comments facilitated active thinking and rewriting by his students. Moreover, he did all of this work virtually, never meeting any of his students in person. And, he displayed effective time management skills fulfilling his Law Fellow duties while also externing with U.S. District Judge Walton.

He has seized opportunities within the Georgetown Law community to enrich his education. He is an executive editor of Georgetown's American Criminal Law Review. He is also the chapter liaison for the American Constitution Society, a member of the Jewish Law Students Association, and a volunteer with Home Court. Additionally, last summer he juggled his internship along with RA duties for me. Mr. Tannenbaum has managed to be quite successful in his legal studies, earning a GPA of 3.84, while still embracing extracurricular activities, pursuing outside interests, and following his beloved Philadelphia sports teams.

Mr. Tannenbaum's demonstrated intelligence, passion and commitment make him an ideal candidate for a judicial clerkship. Equally impressive is his calm demeanor, welcoming personality, and collaborative nature. I witnessed his collaborative nature first hand in our Law Fellow seminar where individualism gives way to the best interests of our class and our students. I also observed his efforts at working collaboratively with first year students, trying to facilitate but not dictate their writing process or product. At the same time, he works well independently; he is not afraid to make a decision and to be held accountable for his actions. His willingness to embrace different learning and working styles was on full display this January, when he served as a Teaching Fellow in a seminar composed entirely of third year law students. He effectively adapted to a new role with a different audience and successfully facilitated the various class practicum assignments and exercises.

During the time that I have known Mr. Tannenbaum, he has never missed a deadline, never submitted a work product that was less than complete, polished and effective, and never once complained. Moreover, in class, he was very inclusive, even of those students who were on the social fringe. For all of these reasons, it should come as no surprise that he is held in high regard and well respected by his peers and by faculty with whom he has worked. He would be a pleasure to work with, would enrich the lives of those around him, and would enhance your chambers.

I obviously have a very high opinion of Mr. Tannenbaum and I wholeheartedly recommend him for a judicial clerkship. Please do not hesitate to contact me if I can be of any further assistance to you.

Sincerely,

Frances C. DeLaurentis

Frances DeLaurentis - fcd@law.georgetown.edu



**U.S. Department of Justice**  
**Civil Rights Division**  
Criminal Section – 4CON  
950 Pennsylvania Ave, NW  
Washington DC 20530

March 02, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1620  
New York, NY 10007-1312

Dear Judge Liman:

I write to recommend David Tannenbaum for a clerkship in your chambers. I serve as a prosecutor with the Criminal Section of the Justice Department's Civil Rights Division. I handle a range of criminal violations, including hate crimes and deprivations of rights under color of law. David joined the Criminal Section as an intern for the summer of 2020. I had the privilege of serving as David's mentor and of supervising him on several substantive projects.

Despite our total telework status in the Section, David distinguished himself as a personable, motivated, capable, and meticulous assistant on numerous investigations and prosecutions. While most interns quietly awaited new work, David actively sought it out and demonstrated earnest interest in the cases beyond his discrete research or writing role. With regard to his work product, David has a unique pairing of strengths that I believe would make him a dependable law clerk – he is capable of generating both quick and exhaustive answers to questions, depending on the needs of the moment.

For example, one assignment David handled for me had an extremely short turnaround. He culled through case law to provide me with an accurate and straightforward answer to an admissibility question for a piece of forensic evidence. He backed up that answer with a keynote summary of relevant cases, each of which was on point. On a longer-term project David handled, drafting a motion *in limine* to exclude certain character evidence, he took an exhaustive approach, soundly presenting every appropriate argument for exclusion. He provided me with that draft several days in advance of the deadline I had given him, and it was the exceedingly rare example of intern work product ready to be filed.

I am confident David will be a personable and responsible law clerk, on whom you can depend for swift and sound legal research and writing. I strongly recommend him for a clerkship.

If you have any questions or if you would like to discuss David further, please feel free to contact me at (571) 309-6322.

Very truly yours,

Kyle R. Boynton  
Trial Attorney  
Criminal Section  
Civil Rights Division

Kyle Boynton - [Kyle.Boynton@usdoj.gov](mailto:Kyle.Boynton@usdoj.gov)

**DAVID TANNENBAUM**

61 Pierce St., NE Washington, DC 20002 | (703) 888 6398 | drt57@georgetown.edu

**Writing Sample**

The following writing sample is an excerpt from a bench memorandum I wrote for my Legal Writing Seminar: Theory and Practice class. It addresses whether Central High School violated the First Amendment rights of student Candace Keys when the school suspended Keys for comments she made during an after-school, Zoom study session.

This sample analyzes 1) whether the student's speech was on campus under *B.L. v. Mahanoy Area School District*, 964 F.3d 170 (3d Cir. 2020), *cert. granted*, 141 S. Ct. 976 (2021), and 2) if the speech was on campus, whether her speech was punishable under *Tinker v. Des Moines Independent County School District*, 393 U.S. 503 (1969). The fact pattern for our assignment involved Central High School suspending student Candace Keys after she expressed her disagreement with the school's mask requirement before Keys' AP Physics class returned to in-person learning during the COVID-19 pandemic. Keys filed a civil action pursuant to 42 U.S.C. § 1983 and the School District moved for summary judgment. The district court granted the motion, and Keys appealed.

The following text is the bench memorandum for the Third Circuit's review of that decision. For brevity, I have only included the analysis section. This writing sample contains minimal edits that reflect my instructor's feedback on a draft version of this assignment.

### Analysis

The First Amendment prohibits government restrictions on the freedom of speech. U.S. Const. amend. I. However, in *Tinker v. Des Moines Independent County School District*, 393 U.S. 503, 507 (1969), the Court recognized “the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.” While the Court observed that “[s]chool officials do not possess absolute authority over their students,” *Tinker*, 393 U.S. at 511, the *Tinker* Court held that a public school may regulate student speech or actions that actually or are reasonably forecast to “substantially disrupt the work and discipline of the school,” *id.* at 513, or “intrudes [on] the rights of other students,” *see id.* at 508.

This case implicates a preliminary question of when *Tinker* applies to speech beyond “the schoolhouse gate.” *Tinker*, 393 U.S. at 506. The Third Circuit recently addressed this question amidst a split among the circuits, holding that “*Tinker* does not apply to off-campus speech.” *Mahanoy*, 964 F.3d at 189.

On appeal, Keys argues that, pursuant to the *Mahanoy* rule, her speech was off campus; thus, the school’s regulation of her speech violated Keys’ First Amendment rights. Keys also argues that even if her speech was on campus, the speech could not be regulated under *Tinker* because Keys’ speech did not actually cause a substantial disruption, support a reasonable forecast of substantial disruption, or interfere with the rights of other students.

#### **I. The School Likely Violated Keys’ First Amendment Rights Because Keys’ Speech During Her Zoom Study Group Likely Occurred Off Campus.**

The Third Circuit distinguishes between on-campus speech, which is subject to the analysis under *Tinker*, and off-campus speech, which is not. Off-campus speech occurs “outside

school-owned, -operated, or -supervised channels and [ ] is not reasonably interpreted as bearing the school's imprimatur.” *Mahanoy*, 964 F.3d at 189. Keys’ speech was likely off campus because her speech likely did not occur within a school channel, nor did the speech likely reasonably bear the school’s imprimatur.

**A. Because Keys’ speech occurred during an after-school, non-mandatory study group meeting on Zoom, Keys’ speech was not likely within a school channel under *Mahanoy*.**

Keys’ speech likely did not occur within a school channel. “[S]peech that is outside school-owned, -operated, or -supervised channels” is off-campus speech. *See Mahanoy*, 964 F.3d at 189. *Mahanoy* involved a student, B.L., who was suspended from her high school cheer team after she posted a Snapchat critical of the team. *Id.* at 175. This Court held that B.L.’s speech was off campus and thus not subject to school regulation because the snap was created during non-school hours on the weekend, away from the school campus, and on a virtual media platform not connected with the school. *Id.* at 179–81.

Keys’ speech was similar to the snapchat in *Mahanoy* because Keys’ speech occurred after school hours and without the use of school resources; thus, Keys’ speech did not occur on a school-owned or -operated channel. Keys expressed her support for former President Trump and her intention to not wear a mask during a voluntary study group meeting organized by the students and hosted on Zoom in the evening after school. Central does not officially use Zoom, instead, the school uses Google Classroom and Google Meet for all coursework management and class instruction. Thus, the channel for Keys’ speech was a private digital service neither owned nor operated by the school.

Keys’ study group, which was formed by the students themselves, was also unlikely supervised by the school under *Mahanoy*. School supervision requires actual faculty supervision

of students during a school activity. *See Morse v. Frederick*, 551 U.S. 393, 396 (2007) (noting that the student’s speech occurred during a school-supervised event where “[t]eachers and administrators were interspersed among the students [at the event] and charged with supervising them”); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 268 (1988); *Mahanoy*, 964 F.3d at 180–81. In *Hazelwood*, the Court discussed the faculty supervision of a school paper produced as part of a high school journalism class, noting that the journalism teacher actually supervised the production of the paper by selecting the editors, determining the publication dates, assigning story ideas, monitoring the progress of student stories, and then editing the stories. *Hazelwood*, 484 U.S. at 268. Unlike the active supervision of the journalism professor in *Hazelwood*, Nelson did not actively supervise the AP Physics study groups. Nelson never actually visited the group and the only direct tangible connection between the study group and the school was the requirement that the group’s hours be logged and submitted to Google Classroom. Yet, Keys herself never submitted these hours, and the possible after-the-fact review of these logs by Nelson would unlikely be enough to render the channel supervised by the school. Reviewing the study group’s log does not rise to the same active supervision of work such as editing or assigning stories as was highlighted in *Hazelwood*. Thus, the school likely did not supervise the channel Keys’ speech occurred in.

**B. Because Keys’ speech was not reasonably viewed as the school’s speech itself, her speech likely cannot be reasonably interpreted as bearing the school’s imprimatur.**

Keys’ speech likely did not reasonably bear the school’s imprimatur. Speech can be regulated by a school under *Tinker* if the speech is reasonably interpreted as bearing the school’s imprimatur. *Mahanoy*, 964 F.3d at 189. Speech reasonably bears the school’s imprimatur if a third party may reasonably view the student’s speech as the school’s own speech. *See*

*Hazelwood*, 484 U.S. at 273; *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 213–214 (3d Cir. 2001). If the speech occurs within an activity that is part of the school’s core curriculum and/or actively supervised by school officials, then a third party may reasonably attribute the speech to the school. See *Hazelwood*, 484 U.S. at 271. The Court in *Hazelwood* held that school officials could regulate what was published in a newspaper, *id.* at 273, written and edited by a school journalism class, *id.* at 262. The Court concluded that the newspaper reasonably bore the school’s imprimatur because production of the newspaper was supervised by a teacher who exercised actual significant supervision over the paper and because the newspaper was “part of the educational curriculum and a regular classroom activit[y]” designed to impart specific lessons to the enrolled students. *Id.* at 268 (internal quotations omitted) (alteration in original). As discussed above, though Nelson offered to check in with the group if invited, he never actually did so; thus, he did not exercise the type of actual supervision over the group identified as relevant in *Hazelwood* to a finding of bearing the school’s imprimatur. While the study group did review coursework on their own, was eligible to receive extra credit, and was intended as a substitute for in-person after-school lab sessions, the study group was not designed by Nelson or the school to be a part of the core curriculum of the class as was the newspaper in the Journalism II course in *Hazelwood*. The groups were encouraged generally as a voluntary tool to succeed in the class. It would likely not be reasonable for a third party to view Keys’ speech made during an unsupervised, non-mandatory study group that was not part of the AP Physic class’s regular activity or core curriculum as the school’s speech.

The School District may argue that if Keys’ speech went unpunished, third parties may have reasonably viewed Keys’ speech as endorsed by the school itself. However, a concern that an observer may infer the school endorses whatever speech it permits is insufficient to support a

reasonable interpretation of the speech bearing the school's imprimatur. *See Saxe*, 240 F.3d at 214 (citing *Hedges v. Wauconda Comm. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1299 (7th Cir. 1993)). Further, it is unlikely that third parties would reasonably regard Keys' speech opposing masks as emanating from a school with a strict mask mandate even if the school did not take action to regulate Keys' speech. Thus, Keys' speech likely did not reasonably bear the school's imprimatur.

**II. If Keys' Speech Was on Campus, Then the School's Suspension Likely Violated Keys' First Amendment Rights as Keys' Speech Was Likely Not Substantially Disruptive nor An Invasion of the Rights of Other Students Under *Tinker*.**

The School District has the burden of showing that its regulation of Keys' speech is constitutional under *Tinker*. *B.H. v. Easton Area Sch. Dist.*, 725 F.3d 293, 321 (3d Cir. 2013); *J.S. v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 928 (3d Cir. 2011). A public school can regulate student speech that is actually substantially disruptive of the work and discipline of the school, is reasonably forecast to cause a substantial disruption, or interferes with the rights of other students. *See Tinker*, 393 U.S. at 508–513; *Saxe*, 240 F.3d at 211. The School District likely cannot satisfy its burden in this case because Keys' speech likely did not cause an actual substantial disruption, did not support a reasonable forecast of substantial disruption, and did not interfere with the rights of other students at Central.

**A. Because Keys' speech likely did not interrupt school activities or intrude in school affairs, her speech was likely not actually substantially disruptive.**

Keys' speech likely did not actually cause a substantial disruption of the work and discipline of the school. An actual substantial disruption substantially "interrupt[s] school activities" or "intrude[s] in [ ] school affairs[.]" *See Tinker*, 393 U.S. at 514. The interruption

must be more than several isolated incidents, *see B.H.*, 725 F.3d at 321, and more than complaints from those who viewed or heard the speech to constitute an actual substantial disruption, *see Tinker*, 393 U.S. at 508; *Mahanoy*, 964 F.3d at 195. In *Tinker*, a public school suspended students for wearing black armbands that the students wore to express their opposition to the Vietnam War. *Tinker*, 393 U.S. at 504. The Court held that the school violated the students' First Amendment rights, reasoning, in part, that though some students "made hostile remarks to the children wearing armbands" there was no evidence that the suspended students' conduct caused any disruption to the work of the school or any class. *See id.* at 508; *see also Mahanoy*, 964 F.3d at 195 (Ambro, J., concurring) (reasoning that the student complaints resulting from the snapchat post were not sufficient to support a finding of substantial disruption); *J.S.*, 650 F.3d at 929 (reasoning that "beyond general rumblings, a few minutes of talking in class, and some officials rearranging their schedules . . . , no disruptions occurred" due to the speech at issue in that case).

Keys' speech likely did not interrupt school activities or intrude in school affairs to the level required to constitute an actual substantial disruption. Keys' stated intention to not wear a mask and the picture she posted indicating her support for President Trump caused Judy to become upset and Alex to voice concern for his health if Keys did come to school without a mask. Keys' comments spurred students, parents, and teachers to email and call Principal Lovejoy to express their concerns over Keys' stated refusal to wear a mask. Lovejoy also appears to insinuate that she was having trouble focusing on the transition back to in-school learning because of Keys' speech and the reaction it caused. The concerned reactions of the community are similar to the hostile remarks in *Tinker*, complaints in *Mahanoy*, and "general rumblings" in *J.S.* that were held not to be sufficient evidence of actual substantial disruption.



The group also met again after Keys' comments and though the September 12 meeting was less friendly and shorter than usual, the students still met and worked on their homework. Further, though Lovejoy may have been distracted from her efforts to manage the return to in-school learning, this distraction was likely no more intrusive than the need to rearrange schedules or settle down a distracted class in *J.S.*, disruptions that this Court held did not support a finding of substantial disruption. Thus, Keys' speech likely did not actually cause substantial disruption.

While the Pennsylvania Supreme Court did consider concerns over student health and complaints from parents as evidence of substantial disruption in *J.S. v. Bethlehem Area School District*, 807 A.2d 847, 869 (Pa. 2002), the court noted in that case that “[t]he most significant disruption caused by the [regulated speech] was [the] direct and indirect impact of the emotional and physical injuries” to the teacher who was the subject of the speech in that case. In *Bethlehem*, the teacher was forced to take medical leave and not finish the school year due to the impact of threatening and derogatory student speech directed at the teacher. *Bethlehem*, 807 A.2d at 869. The concerns related to student health articulated by students and parents in Keys' case were not accompanied by a similar direct interruption of school activities as the teacher taking a medical leave of absence in *Bethlehem* represented. The concerns over student health and parent complaints were likely not enough on their own to constitute an actual substantial disruption in *Bethlehem*, and similarly would likely not be enough to satisfy this prong of *Tinker* in Keys' case.

**B. Because Keys' speech did not raise a specific and concrete threat of substantial disruption, her speech was likely not reasonably forecast to cause a substantial disruption of the work and discipline of the school.**

Keys' speech was also likely not reasonably forecast by Central to cause a substantial disruption of the work and discipline of the school. Student speech is not protected from

regulation if school officials may reasonably forecast the speech to cause a substantial disruption. *See Tinker*, 393 U.S. at 513–514. A reasonable forecast that a substantial disruption will occur must be “specific[] and concrete[]” and can be supported by past disruptions stemming from similar speech. *See Saxe*, 240 F.3d at 212; *see also DeJohn v. Temple Univ.*, 537 F.3d 301, 317 (3d Cir. 2008) (noting that speech must create a “tenable threat of disruption”); *Sypniewski v. Warren Hills Reg’l Bd. of Educ.*, 307 F.3d 243, 257 (3d Cir. 2002). In *Sypniewski*, the school district enacted a racial harassment policy after repeated instances of racial conflict in the district; the policy prohibited the display of symbols of racial hate including the Confederate flag. *Sypniewski*, 537 F.3d at 249. A student challenged the discipline he received under this policy after wearing a shirt that discussed redneck themes but did not contain the Confederate flag. *Id.* at 246. This Court held that the school district violated the First Amendment because there was not a strong enough relationship between the term redneck and association with a known white supremacist gang or the Confederate flag to justify the shirt being prohibited under the reasonable forecast of substantial disruption prong. *See id.* at 256. This Court reasoned that a school “must point to a particular and concrete basis for concluding that the association is strong enough to give rise to well-founded fear of genuine disruption in the form of substantially interfering with school operations.” *Id.* at 257.

Central likely did not reasonably forecast a substantial disruption stemming from Keys’ speech. Lovejoy received calls and emails from students, parents, and teachers concerned about what Keys said and the threat she posed to student health if she attended school without a mask. Keys’ speech likely did not present a specific and concrete threat because the school had a plan to station a school security officer at the entrance of the school, and the officer would likely not have let Keys into the school without a mask. Since Keys would not have been able to enter the

school without a mask, the forecast of substantial disruption stemming from a fear over student health and the teachers' ability to enforce school mask rules was likely not concrete and therefore not reasonable. Further, similar to the school in *Sypniewski*, Central cannot support its forecast of substantial disruption with examples of past disruptions stemming from similar incidents of the specific speech at issue. Lovejoy acknowledged that she had never previously suspended a student for engaging in political speech, which was the type of speech Keys engaged in. Given the presence of the security guard precluding Keys' ability to enter the school without a mask and the lack of past incidents of disruption from similar political speech, it is unlikely that Central's forecasted threat of substantial disruption from Keys' speech was specific and concrete enough to be a reasonable forecast.

The School District may argue, as Lovejoy seems to suggest, that Keys' mere presence at the school was reasonably forecast to cause a substantial disruption even if she did not enter the school. While "*Tinker* does not require school officials to wait until disruption actually occurs before they may act," *LaVine v. Blaine Sch. Dist.*, 257 F.3d 981, 989 (9th Cir. 2001), the desire to avoid controversy that may result from speech is not a sufficient reason to regulate speech, *see Tinker*, 393 U.S. at 510 (reasoning that an "urgent wish to avoid controversy which might result from the expression" was insufficient to support a reasonable forecast of substantial disruption). Lovejoy noted that she was "particularly concerned that [Keys' refusal to wear a mask] would snowball to include larger but related political issues" in an election year. Yet, as the Court observed in *Tinker*, such apprehension over political controversy and the debate that may result from a student's speech is not a sufficient reason to restrict that speech. *See Tinker*, 393 U.S. at 510. Further, while protests against wearing masks have garnered headlines, including possibly the Trump rally Keys attended the weekend before her Zoom comments,

neither Lovejoy nor the School District cited any evidence that Keys' speech prompted any concrete or specific plans for protests at the school. If the apprehension of the school in *Tinker* over the general disruption that a group of students protesting the contentious Vietnam War may prompt was not sufficient to support a reasonable forecast of substantial disruption in that case, then it is unlikely that Central could sustain a similar argument based on one student's speech and given that the anti-mask movement is likely not any more of a divisive political issue than the Vietnam War was in 1969.

The School District may also argue that Keys' threat to attend school without a mask was similar to a threat of school violence; thus, her speech was reasonably forecast to cause a substantial disruption. District courts in the Third Circuit have analyzed threats of violence under *Tinker* and found that threats of violence were reasonably forecast to cause a substantial disruption. See *J.R. v. Penns Manor Area Sch. Dist.*, 373 F. Supp. 3d 550, 562 (W.D. Pa. 2019); *A.N. v. Upper Perkiomen Sch. Dist.*, 228 F. Supp. 3d 391, 400 (E.D. Pa. 2017). In *J.R.*, the suspended student had discussed, with classmates and a guidance counselor, who he would shoot at the school—including targeting a specific teacher—and how he would perform a school shooting. *J.R.*, 373 F. Supp. 3d at 563. The court reasoned that “[w]ithout doubt, a middle school student who engages in conversations about school shootings with classmates might cause a substantial disruption[.]” *Id.* In *A.N.*, a student was suspended for producing a mash-up video that referenced school shootings. *A.N.*, 228 F. Supp. 3d at 393. The court reasoned that the school had a reasonable fear of substantial disruption from this video because school was canceled in response to the video and “[c]onsidering the recent history of school shootings across the nation[.]” *Id.* at 400.

While Keys' presence in a classroom without a mask may have posed a threat to other student's health, that threat is unlikely the same threat posed by a student threatening, or perceived to be threatening, a school shooting or school violence. As the court in *A.N.* noted, school shootings are a tragic reality for American students; thus, the fear of substantial disruption from a threat of a school shooting is more grounded in past examples than the speech at issue in this case. Though a student refusing to wear a mask inside a school may pose a threat to student and teacher health, the threat in this case was likely not concrete because of the presence of the security officer and the likely ability of that officer to prevent Keys from entering the school. While still potentially a health concern, Keys simply standing outside the school without a mask would likely present far less of a health threat and certainly far less of a threat than a student who arrived with a firearm outside the school. Thus, the school shooting cases are unlikely to support the School District's argument that Keys' speech was reasonably forecast to cause a substantial disruption of the work and discipline of the school.

**C. Because Keys' speech likely did not threaten violence or severe harassment, her speech likely did not interfere with the rights of other students.**

Keys' speech likely did not interfere with the rights of other students at Central. A public school can regulate student speech that interferes with the "rights of other students to be secure and to be let alone." *Tinker*, 393 U.S. at 508. The Third Circuit has never held that student speech interfered with the rights of others, and the *Saxe* Court noted that the scope of the interference with the rights of others prong is unclear. *Saxe*, 240 F.3d at 217. However, it is likely that speech must be more than offensive and must threaten severe or pervasive harassment or violence to constitute speech that interferes with the rights of others. See *Wynar v. Douglas Cty. Sch. Dist.*, 728 F.3d 1062, 1072 (9th Cir. 2013); *Saxe*, 240 F.3d at 217; *DeJohn*, 537 F.3d at

320; *see also Doe v. Valencia Coll.*, 903 F.3d 1220, 1230 (11th Cir. at 2018) (holding persistent harassment of female student violated interference with rights of others prong). This Court in *DeJohn* held that a university sexual harassment policy violated the First Amendment, *DeJohn*, 537 F.3d at 320, reasoning in part that because the harassment policy was not “qualified with a standard akin to a severe or pervasive requirement, [it] may suppress core protected speech” and thus could not be justified as prohibiting interference with the rights of others under *Tinker*, *id.* at 319–20. The Ninth Circuit in *Wynar* held that a school did not violate the First Amendment when it suspended a student after he made threatening comments on MySpace regarding perpetrating a school shooting. *Wynar*, 728 F.3d at 1065. The court reasoned that the school shooting threats were both reasonably forecast to cause a substantial disruption, *id.* at 1070, and interfered with the rights of others, *id.* at 1072 (“[W]ithout doubt the threat of a school shooting . . . represent[s] the quintessential harm to the rights of other students to be secure.”).

Keys’ speech likely did not interfere with the rights of other Central students to be secure and let alone because her speech did not constitute severe or pervasive harassment and did not threaten direct violence similar to a school shooting. The School District may argue, similar to the school violence argument under the reasonable forecast of substantial disruption analysis, that Keys’ speech interfered with the rights of other students to be secure. There are relatively few cases analyzing and relying on *Tinker*’s rights of others prong, *see id.* 1071, and the court in *Wynar* highlighted the specific threat of school shootings in its relatively brief analysis of this prong, *id.* at 1072. There is also no evidence that Keys’ one-time speech constituted the severe or pervasive harassment that this Court in *DeJohn* believed would interfere with the rights of others. The danger posed by Keys’ speech and threat to attend school without a mask was mitigated by the fact that the school had a plan in place to prevent Keys from ever entering the

school. Further, as the Ninth Circuit observed, the reality of school shootings in this country renders a threat of a school shooting far more palpable and thus likely dissimilar to the threat posed by Keys' speech. *Id.* at 1064 (“[I]n the wake of school shootings at Columbine, Santee, Newtown and many others, school administrators face the daunting task of evaluating potential threats of violence and keeping their students safe without impinging on their constitutional rights.”). The threat of a shooting prompted the school in *Wynar* to involve the police because of its seriousness, an action Central did not feel compelled to take further supporting that the threats are not analogous. *Id.* at 1066. Therefore, Keys' speech likely did not interfere with the rights of other students.

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**Applicant Education**

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Date of BA/BS	June 2013
JD/LLB From	Northwestern University School of Law
	<a href="http://www.law.northwestern.edu/">http://www.law.northwestern.edu/</a>
Date of JD/LLB	May 13, 2022
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Northwestern University Law Review
Moot Court Experience	No

**Bar Admission****Prior Judicial Experience**

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No



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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

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March 5, 2022

The Honorable Lewis J. Liman  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St.  
New York, NY 10007

Dear Judge Liman:

Enclosed please find my application for a clerkship in your chambers for the 2024-25 term. I am a third-year student at Northwestern Pritzker School of Law and will graduate in May. I am interested in clerking for you because of your distinguished career as a federal prosecutor and a seasoned litigator. After two years of practice, a clerkship in your chambers would be an invaluable opportunity to broaden my knowledge in trial advocacy in preparation for pursuing a career as a trial attorney.

I developed an interest in clerking during my summer internship with Judge Sterling Johnson, Jr. at the Eastern District of New York. Despite our remote work setting, my ability to work independently and manage competing priorities earned me the judge's trust and the responsibility to draft a class certification order. As an intern at the Securities and Exchange Commission and the Department of Justice's Criminal Division, I gained experience in litigation involving federal securities and anti-fraud laws and reaffirmed my desire to pursue a career in securities and white-collar litigation.

My application includes a resume, transcript, and writing sample. Letters of recommendation from the following individuals have been added to the application by the Law School:

Bryan Furst, Center for Appellate Litigation  
bryanfurst@gmail.com; (206) 465-2217

Professor Cliff Zimmerman, Northwestern Pritzker School of Law  
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Professor Jocelyn Francoeur, Northwestern Pritzker School of Law  
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Professor Samuel Fifer, Northwestern Pritzker School of Law  
s-fifer@law.northwestern.edu; (312) 876-3114

I would value the opportunity to interview with you for this position. Please contact me if I may provide any additional information in support of my candidacy.

Respectfully,

*Charles Tso*

Charles Tso

## CHARLES TSO

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### EDUCATION

#### Northwestern Pritzker School of Law

Chicago, IL

*Juris Doctor Candidate*, May 2022

GPA: 3.852 (Dean's List All Semesters)

- NORTHWESTERN UNIVERSITY LAW REVIEW, Notes Editor, Vol. 116
- Research Assistant, Professor Cliff Zimmerman (Anti-Discrimination Law)
- Center on Wrongful Conviction Clinic, Spring 2022

#### Fordham University School of Law

New York, NY

*Completed First-Year Juris Doctor Curriculum*, August 2019 – May 2020

GPA: 3.556

- FORDHAM URBAN LAW JOURNAL (invited)
- Research Assistant, Fordham Urban Law Center (Remedies to restore property rights in post-conflict regions)
- Asian-Pacific American Law Students Association, Executive Board

#### University of Michigan

Ann Arbor, MI

*Master of Urban Planning*, May 2015

GPA: 3.925

- Research Assistant, Professor Jonathan Levine
- Urban Planning Student Association, Co-President

#### University of California, Los Angeles

Los Angeles, CA

*Bachelor of Arts in Geography, with Departmental Honors*, June 2013

### EXPERIENCE

#### United States Department of Justice, Criminal Division

Washington, D.C.

*Legal Intern, Fraud Section*, January – April 2022

- Researched and drafted memoranda on legal issues such as withdrawal from conspiracy, hearsay exceptions, misrepresentation to auditors, and state Medicaid regulations for prosecuting health care and securities frauds

#### United States Securities and Exchange Commission

Chicago, IL

*Student Honors Intern*, August – November 2021

- Researched and drafted motions in limine for an offering fraud case
- Reviewed and summarized documents for cyber- and affinity-fraud investigations

#### Morrison & Foerster, LLP

New York, NY

*Summer Associate*, May – July 2021 (Return Offer Accepted)

- Researched and drafted memoranda on litigation matters involving issues such as discovery stay, defamation, collateral estoppel, breach of contract, and breach of fiduciary duty
- Researched and summarized data security and privacy enforcement actions by state and federal agencies
- Represented pro bono client navigating the U.S. citizenship and naturalization process

#### United States District Court for the Eastern District of New York

New York, NY

*Judicial Intern to the Honorable Sterling Johnson, Jr.*, June – August 2020

- Researched and drafted a class certification order for a consumer class action
- Researched and drafted memoranda on the standards for subject matter jurisdiction and service of process

#### City of Wilsonville

Wilsonville, OR

*City Planner*, December 2016 – July 2019

- Drafted over 100 reports analyzing development projects' compliance with zoning and land use law

### ADDITIONAL INFORMATION

**Volunteering:** 1000 Friends of Oregon, Housing Advocacy Volunteer (June – November 2016)

**Languages / Interests:** Mandarin Chinese (Fluent), playing guitar, running, cooking

# Northwestern

## PRITZKER SCHOOL OF LAW

### UNOFFICIAL GRADE SHEET

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To verify grades and degree, students must request an official transcript produced by the Law School.

Name:	<b>Charles Tso</b>	Total Earned Credit Hours:	43.000
Matriculation Date:	2020-08-24	Total Transfer Credit Hours:	28.000
Program(s):	Juris Doctor	Cumulative Credit Hours:	71.000
		Cumulative GPA:	3.845

Term	Term GPA	Course	Course Title	Credits	Grade	Professor
<b>2020 Fall</b>	3.727	BUSCOM 629	Employment Law	3.000	B+	Provenzano,Susan E
		CONPUB 650	Federal Jurisdiction	3.000	A-	Pfander,James E
		CONPUB 734	Anti-Discrimination Law	3.000	A	Zimmerman,Clifford
		LAWSTUDY 620	Advanced Legal Research	2.000	A	Willis,Clare Gaynor
<b>2021 Winter</b>	3.670	BUSCOM 738	Nego. a Joint Venture in China	2.000	A-	Gounaris,Nestor Anthony
<b>2021 Spring</b>	3.927	BUSCOM 637	Entertainment Law	3.000	A+	Fifer,Samuel
		CRIM 610	Constitutional Crim Procedure	3.000	B+	Rountree,Meredith Martin
		LAWSTUDY 669	Adv Legal Reasoning: Fed Sent	2.000	A	Francoeur,Jocelyn D
		LAWSTUDY 710	Privacy Law	3.000	A	Kugler,Matthew Brett
		LITARB 743	Legal Ethics in Motion	3.000	A	Muchman,Wendy
<b>2021 Summer</b>	0.000	LAWSTUDY 699	Summer Research Internship	2.000	CR	Zimmerman,Clifford
<b>2021 Fall</b>	3.881	CONPUB 656	Practicum: Civil Government	4.000	A	Stratton,Maureen
		CRIM 620	Criminal Process	3.000	A-	Rountree,Meredith Martin
		LITARB 601	Legal Ethics & Prof'l Resp	3.000	A	Muchman,Wendy
		LITARB 612	Strategy of Litigation	2.000	B+	Salpeter,Alan N
		LITARB 616	Pre-Trial Advocacy	2.000	A+	Shapiro,Andrew D
<b>2022 Spring</b>	0.000	CRIM 608	Practicum: Criminal Law	4.000		Main,Scott Frederick
		LITARB 621	Appellate Advocacy	3.000		Rountree,Meredith Martin
		LITARB 635	Evidence	3.000		Koehler,Jonathan J
		LITARB 708	Clinic: Wrongful Convictions	4.000		Drizin,Steven A
<b>Transferred Credit</b>		LAW	CIVIL PROCEDURE	3.000	T	FORDHAM UNIVERSITY SCHOOL OF LAW
		LAW	CONSTITUTIONAL LAW	3.000	T	FORDHAM UNIVERSITY SCHOOL OF LAW
		LAW	CONTRACTS	3.000	T	FORDHAM UNIVERSITY SCHOOL OF LAW
		LAW	CRIMINAL LAW	3.000	T	FORDHAM UNIVERSITY SCHOOL OF LAW
		LAW	CLR I	2.000	T	FORDHAM UNIVERSITY

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## PRITZKER SCHOOL OF LAW

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To verify grades and degree, students must request an official transcript produced by the Law School.

Term	Term GPA	Course	Course Title	Credits	Grade	Professor
		LAW	PROPERTY	3.000	T	SCHOOL OF LAW FORDHAM UNIVERSITY SCHOOL OF LAW
		LAW	TORTS	3.000	T	FORDHAM UNIVERSITY SCHOOL OF LAW
		LAW	CLR II	2.000	T	FORDHAM UNIVERSITY SCHOOL OF LAW
		LAW	GENERAL TRANSFER CREDIT	6.000	T	FORDHAM UNIVERSITY SCHOOL OF LAW

Run Date: 1/21/2022

Run Time: 13:54:33 PM



# FORDHAM UNIVERSITY

THE SCHOOL OF LAW  
150 WEST 62nd STREET NEW YORK, NY 10023

Name: Charles Y. Tso

Student ID: A17668613

DOB: [REDACTED] SSN: \*\*\* - \*\* - [REDACTED]

Previous Institution(s):

UNIVERSITY OF MICHIGAN

UNIV CALIF LOS ANGELES Sep 2013 - Apr 2015

Sep 2009 - Jun 2013

COURSE #	COURSE TITLE	CRED	GRD	PTS	ICOURSE #	COURSE TITLE	CRED	GRD	PTS
Course Level: Juris Doctor									
Current Program									
Juris Doctor									
College : Law School									
Major : Law Day									
INSTITUTION CREDIT:									
Fall 2019									
Law School									
Law Day									
1st time adm at level-mat only									
CNGL 0104	Contracts 5	5.000	A	20.000					
CRGL 0103	Criminal Law 5 and 6	3.000	B	9.000					
LTGL 0106	Legal Writing/Resrch 5B	3.000	A-	11.001					
LWGL 0105	Legal Proc and Quant Meth 5	1.000	P	.000					
TOGL 0108	Torts 5 and 6	4.000	B+	13.332					
Ehrs:	16.000	QPts:	53.333						
GPA-Hrs:	15.000	GPA:	3.556						
Spring 2020									
Grades are not included in GPA due to the coronavirus.									
Law School									
Law Day									
Continuing Registration									
CVGL 0101	Civil Procedure 5 and 6	4.000	P	.000					
FCGL 0102	Constitutional Law 5 and 6	4.000	P	.000					
FCGL 0129	Legislation & Regulation 5 & 6	4.000	P	.000					
LTGL 0106	Legal Writing and Research 5B	3.000	P	.000					
PRGL 0107	Property 5 and 6	4.000	P	.000					
Ehrs:	16.000	QPts:	0.000						
GPA-Hrs:	0.000	GPA:	0.000						
***** TRANSCRIPT TOTALS *****									
INSTITUTION	Ehrs:	32.000	QPts:	53.333					
	GPA-Hrs:	15.000	GPA:	3.556					
TRANSFER	Ehrs:	0.000	QPts:	0.000					
	GPA-Hrs:	0.000	GPA:	0.000					
OVERALL	Ehrs:	32.000	QPts:	53.333					
	GPA-Hrs:	15.000	GPA:	3.556					
***** END OF TRANSCRIPT *****									

CHARLES TSO

*Vanessa C. Garcia*  
Vanessa C. Garcia  
Assistant Dean and Registrar, School of Law

Not considered official without Seal or Registrar's Signature.

Date Issued: 01-JUN-2020

Page: 1

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Telephone: 310-825-1091  
School Web Page: <http://www.registrar.ucla.edu/>  
Accreditation: Western Association of Schools and Colleges, Comm for Senior Colleges & Universities (WASC-ACSCU)

### Student Information

Student Name: TSO, CHARLES YUHAO  
Numeric Identifier: 503796409  
Birth Date: Not Provided By the Sending School  
Student Email: charlietsoucla@gmail.com

### Receiver Information

CHARLES TSO CHARLIE.TSO@GMAIL.COM CHARLIE.TSO@GMAIL.COM  
charlie.tso@gmail.com



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**NAME: TSO, CHARLES YUHAO**  
**UCLA ID: 503796409**  
**BIRTHDATE: 01/17/XXXX**

**UNIVERSITY OF CALIFORNIA, LOS ANGELES**  
**UNDERGRADUATE ACADEMIC TRANSCRIPT**

PAGE 1 OF 2

**PROGRAM OF STUDY**

ADMIT DATE: 09/21/2009  
 COLLEGE OF LETTERS AND SCIENCE  
 MAJOR: GEOGRAPHY  
 MINOR: URBAN AND REGIONAL STUDIES

**DEGREES | CERTIFICATES AWARDED**

BACHELOR OF ARTS AWARDED JUNE 14, 2013  
 IN GEOGRAPHY  
 WITH DEPARTMENTAL HONORS AWARDED  
 WITH MINOR IN URBAN AND REGIONAL STUDIES

**SECONDARY SCHOOL**

ARTESIA HIGH SCHOOL, JUNE 2009

**UNIVERSITY REQUIREMENTS**

ENTRY LEVEL WRITING SATISFIED  
 AMERICAN HISTORY & INSTITUTIONS SATISFIED

**CALIFORNIA RESIDENCE STATUS:** NONRESIDENT

**TRANSFER CREDIT**

		PSD
ADVANCED PLACEMENT	05/2008	4.0
ADVANCED PLACEMENT	05/2009	8.0

**FALL QUARTER 2009**

MAJOR: UNDECLARED-HUMANITIES

FIAT LUX FRSHMN SEM	BIOENGR 19	1.0	0.0	P	
HONORS CONTENT					
UNIVERSITY WRITING	ENGCOMP 2	5.0	11.5	C+	
GLOBAL ENVIRONMNT 1	GE CLST M1A	5.0	16.5	B+	
DIFF&INTGL CALCULUS	MATH 31A	4.0	10.8	B-	
		ATM	PSD	PTS	GPA
TERM TOTAL		15.0	15.0	38.8	2.771

**WINTER QUARTER 2010**

CHEMICAL STRUCTURE	CHEM 20A	4.0	8.0	C	
ENGL COMP-RHET&LANG	ENGCOMP 3	5.0	0.0	I	
INTEGRN&INF SERIES	MATH 31B	4.0	9.2	C+	
		ATM	PSD	PTS	GPA
TERM TOTAL		8.0	8.0	17.2	2.150

**SPRING QUARTER 2010**

ENERGETICS&CHANGE	CHEM 20B	4.0	6.8	C-	
CALC OF SEVRL VAR	MATH 32A	4.0	0.0	F	
MECHANICS	PHYSICS 1A	5.0	11.5	C+	
ENGL COMP-RHET&LANG	ENGCOMP 3	5.0	15.0	B	
04/07/2010 REMOVAL OF 10W I GRADE					
		ATM	PSD	PTS	GPA
TERM TOTAL		13.0	9.0	18.3	1.408

**SUMMER SESSIONS 2010**

PRIN OF ECONOMICS	ECON 1	4.0	13.2	B+	
PRIN OF ECONOMICS	ECON 2	4.0	13.2	B+	
		ATM	PSD	PTS	GPA
TERM TOTAL		8.0	8.0	26.4	3.300

**FALL QUARTER 2010**

MAJOR: PREBUSINESS ECONOMICS

STATS-ECONOMISTS	ECON 41	4.0	0.0	D	
REPEATED: EXCLUDED FROM GPA					
HIST AM MOTION PIC	FILM TV 106A	6.0	22.2	A-	
01/03/2011 GRADE CHANGED					
PEOPLE&EARTH ECOSYS	GEOG 5	5.0	18.5	A-	
		ATM	PSD	PTS	GPA
TERM TOTAL		11.0	15.0	40.7	3.700

**WINTER QUARTER 2011**

JERUSALEM-HOLY CITY	AN N EA 10W	5.0	20.0	A	
WRITING INTENSIVE					
STATS-ECONOMISTS	ECON 41	4.0	12.0	B	
REPEAT OF COURSE PREVIOUSLY TAKEN					
FIAT LUX FRSHMN SEM	FILM TV 19	1.0	0.0	P	
HONORS CONTENT					
FIAT LUX FRSHMN SEM	GEOG 19	1.0	0.0	P	
HONORS CONTENT					
REGNL DEV&WRLD ECON	GEOG 4	5.0	13.5	B-	
		ATM	PSD	PTS	GPA
TERM TOTAL		16.0	12.0	45.5	3.250

**SPRING QUARTER 2011**

MICROECONOMC THEORY	ECON 11	4.0	9.2	C+	
STUDENT DEVELOPMENT	EDUC 150	2.0	0.0	P	
ACCOUNTING PRINCPLS	MGMT 1A	4.0	10.8	B-	
06/21/2011 GRADE CHANGED					
INTRODUCTORY SOCIOL	SOCIOL 1	5.0	15.0	B	
		ATM	PSD	PTS	GPA
TERM TOTAL		15.0	15.0	35.0	2.692

**SUMMER SESSIONS 2011**

URBAN GEOGRAPHY	GEOG 150	4.0	16.0	A	
CALIFORNIA	GEOG 184	4.0	13.2	B+	
BIODIVR-CHNGNG WRLD	GEOG 2	5.0	20.0	A+	
VOCAL TECHNQ-BEGNRS	MUSIC 80V	4.0	16.0	A+	
		ATM	PSD	PTS	GPA
TERM TOTAL		17.0	17.0	65.2	3.835

**FALL QUARTER 2011**

MAJOR: GEOGRAPHY

INDUS LOC&RGNL DVL	GEOG 155	4.0	16.0	A+	
APPLIED CLIMATOLOGY	GEOG M106	4.0	16.0	A	
WRLD HIST TO AD 600	HIST 20	5.0	20.0	A	
DEAN'S HONORS LIST					
		ATM	PSD	PTS	GPA
TERM TOTAL		13.0	13.0	52.0	4.000

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**NAME: TSO, CHARLES YUHAO**  
**UCLA ID: 503796409**  
**BIRTHDATE: 01/17/XXXX**

**UNIVERSITY OF CALIFORNIA, LOS ANGELES**  
**UNDERGRADUATE ACADEMIC TRANSCRIPT**

PAGE 2 OF 2

**WINTER QUARTER 2012**

ETHNICITY-US CITY	GEOG 144	4.0	16.0	A
CITIES OF EUROPE	GEOG 152	4.0	12.0	B
HOLOCAUST-FILM&LIT	GERMAN 59	5.0	20.0	A
CITIES AND PLANNING	URBN PL 120	4.0	16.0	A
DEAN'S HONORS LIST				
	<b>ATM</b>	<b>PSD</b>	<b>PTS</b>	<b>GPA</b>
TERM TOTAL	17.0	17.0	64.0	3.765

**SPRING QUARTER 2012**

FOREST ECOSYSTEMS	GEOG 111	4.0	16.0	A
METROPL LOS ANGELES	GEOG 156	4.0	14.8	A-
GEOG INFO SYSTEMS	GEOG 7	5.0	18.5	A-
SOCAL REGIONAL ECON	URBN PL CM137	4.0	14.8	A-
DEAN'S HONORS LIST				
	<b>ATM</b>	<b>PSD</b>	<b>PTS</b>	<b>GPA</b>
TERM TOTAL	17.0	17.0	64.1	3.771

**SUMMER SESSIONS 2012**

TRANSPORTATION GEOG	GEOG M149	4.0	16.0	A
	<b>ATM</b>	<b>PSD</b>	<b>PTS</b>	<b>GPA</b>
TERM TOTAL	4.0	4.0	16.0	4.000

**FALL QUARTER 2012**

INTRO-PUBLIC POLICY	PUB PLC 10A	4.0	16.0	A
URBN POLCY&PLANNING	URBN PL 121	4.0	16.0	A
PLANG-MINORTY COMUN	URBN PL 141	4.0	16.0	A
STUDENT RSRCH PRGRM	URBN PL 99	2.0	0.0	P
HONORS CONTENT				
	<b>ATM</b>	<b>PSD</b>	<b>PTS</b>	<b>GPA</b>
TERM TOTAL	14.0	14.0	48.0	4.000

**WINTER QUARTER 2013**

ECONOMIC GEOGRAPHY	GEOG 148	4.0	14.8	A-
HONORS RESEARCH I	GEOG 198A	4.0	0.0	I
DIRECTED RESEARCH	URBN PL 199	4.0	16.0	A
TRANS&ECON OUTCOMES	URBN PL 257	4.0	14.8	A-
	<b>ATM</b>	<b>PSD</b>	<b>PTS</b>	<b>GPA</b>
TERM TOTAL	12.0	12.0	45.6	3.800

**SPRING QUARTER 2013**

INTMD GEOG INFO SYS	GEOG 168	4.0	13.2	B+
HONORS RESEARCH II	GEOG 198B	4.0	16.0	A
TRNSPRT ECON&FINANC	URBN PL M256	4.0	13.2	B+
HONORS RESEARCH I	GEOG 198A	4.0	16.0	A
04/17/2013 REMOVAL OF 13W I GRADE				
	<b>ATM</b>	<b>PSD</b>	<b>PTS</b>	<b>GPA</b>
TERM TOTAL	12.0	12.0	42.4	3.533

**UNDERGRADUATE TOTALS**

	<b>ATM</b>	<b>PSD</b>	<b>PTS</b>	<b>GPA</b>
PASS/NO PASS TOTAL	7.0	7.0	N/A	N/A
GRADED TOTAL	194.0	190.0	N/A	N/A
CUMULATIVE TOTAL	201.0	197.0	650.2	3.352

TOTAL NON-UC TRANSFER CREDIT ACCEPTED 12.0  
 TOTAL COMPLETED UNITS 209.0

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*Frank Y. Wada*  
 University Registrar

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Box 951429  
Los Angeles, CA 90095-1429

(310) 825-1091  
transcripts@registrar.ucla.edu  
http://www.registrar.ucla.edu

The following information is offered to aid in evaluating this student's academic record. The *UCLA General Catalog* contains more detailed information concerning courses and degree requirements. The catalog can be found on the Internet at <http://www.registrar.ucla.edu/catalog/>

**DEGREE REQUIREMENTS.** A minimum of 180 quarter units (120 semester units) is required for the bachelor's degree.

**CREDITS.** Beginning September 1966, credits are quarter units; prior to that time, credits were semester units. In 1957, UCLA switched from a 3.0 to a 4.0 point grading system.

**COURSE NUMBERS.** Lower division courses are numbered 1-99; upper division, 100-199; graduate, 200-299; teacher training, 300-399; professional graduate, 400-499; and individual study and research graduate, 500-599.

## DEFINITION OF LETTER GRADES AND APPLICABLE GRADE POINTS

UNDER-GRADUATES	GRADE			GRADUATES
	GRADE POINTS			
Extraordinary	A+ 4.0			Superior achievement
Superior		A 4.0	A- 3.7	Superior achievement
Good	B+ 3.3	B 3.0	B- 2.7	Satisfactorily demonstrated potentiality for professorial achievement in field of study
Fair	C+ 2.3	C 2.0	C- 1.7	Passed the course but did not do work indicative of potentiality for professorial achievement in the field of study
Poor	D+ 1.3	D 1.0	D- 0.7	Not applicable for graduates
Fail		F 0.0		Fail

## DEFINITION OF OTHER GRADES

GRADE	DEFINITION	COMMENTS
DR	Deferred Report	Not included in units attempted
I	Incomplete	Satisfactory work but incomplete-not included in units attempted
IP	In Progress	Multiple-term course-not included in units attempted
J	Internal Grade	Grade pending-not included in units attempted
L	Late Registration	Grade pending-not included in units attempted
NP	Not Passed	Undergraduates only
NR	No Report	Grade pending-not included in units attempted
P	Passed	Achievement of grade C or better (undergraduates)
R	Retroactive Add	Grade pending-not included in units attempted
S	Satisfactory	Achievement of grade B or better (graduates)
U	Unsatisfactory	Graduates only

**GRADE-POINT AVERAGE (GPA) CALCULATION.** The GPA is calculated by dividing grade points by graded units attempted. To convert quarter units to semester units, multiply by .666; to convert semester units to quarter units, multiply by 1.5.

**REPETITION OF COURSES.** A student may repeat only those courses for which a grade of C-, D+, D, D-, F, NP, or U is recorded, unless otherwise noted in the *UCLA General Catalog*.

## EXPLANATION OF CODES

CODE	TYPE	COMMENTS
G	Grading basis	Mandatory letter grade
GO	Repeat	Full credit
GP	Repeat	Course P/NP, no credit
G1	Repeat	Units attempted and grade points only
G5	Repeat	Unapproved repeat, no credit
JD	Repeat	Removed I, repeated; units passed only
JL	Incomplete	Lapsed I
JM	Credit	No credit awarded
J1	Incomplete	Removed I, grade points allowed
J3	Incomplete	Removed I, repeated grade points allowed
J4	Repeat	Lapsed or removed I, repeated
K1	Credit	Credit by examination
L1	Credit	Deduction for duplication of credit
L2	Credit	Deduction for duplication of advanced placement
L3	Credit	Deduction for duplication of advanced standing
MG	Credit	No credit for work under dismissal- repeated course
MR	Credit	No credit for work under dismissal-subsequently repeated
MS	Miscellaneous	Refer to memoranda
M1, MP	Credit	No credit for work under dismissal
M3	Credit	Credit granted via petition
N1	Miscellaneous	Grade corrected by instructor-clerical or procedural error
PG	Repeat	Repeat of P/NP, unit credit
PJ, SJ	Incomplete	Removed I on P/NP, S/U
PL, SL	Incomplete	Lapsed I on P/NP, S/U
PN	Grading basis	P or NP or I grade
PT, ST	Multiple term	Final unit total of a multiple-term course (P, NP, S, U, I)
Q5	Miscellaneous	Retroactive add
Q8	Miscellaneous	Retroactive section change
RD	Repeat	Excluded from GPA, units passed only
RF	Repeat	Excluded from GPA, no credit
SU	Grading basis	S or U or I grade
TP, TS	Multiple term	First term(s) of a multiple-term course (P, NP, S, U)-no credit
T1, T2	Multiple term	First term, second term of multiple-term course-no credit
T3, T4	Multiple term	Third term, fourth term of multiple-term course-no credit
2T, 3T, 4T	Multiple term	Final unit total for all terms of multiple-term course

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**CERTIFICATION.** The Seal of the University of California, the Registrar's signature, and the date.

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**Samuel Fifer**

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D +1 312-876-3114

Dentons US LLP  
233 South Wacker Drive  
Suite 5900  
Chicago, IL 60606-6361  
United States  
dentons.com

November 5, 2021

Re: Clerkship Reference for Charles Tso

To Whom It May Concern:

I am writing this letter on behalf of Mr. Charles Tso, whom I have come to know by virtue of having taught him in the Spring 2021 Semester in the course entitled Media & Entertainment Law at Northwestern Pritzker School of Law. Mr. Tso did extremely well in this course, earning an A+ grade. I am a partner in the Dentons Law Firm (located in Chicago), where I practice Media & Entertainment Law, and have been an Adjunct Professor in the Law School for nearly 30 years. During that time, I have had the privilege of teaching hundreds of law students and Mr. Tso is one of a handful of standouts.

Through my interaction with Mr. Tso, I found him to be a proactive and participatory addition to my class and someone who served as a conversation leader in many instances. It was clear to me that as a consequence of prior experience and high level interaction, Mr. Tso was quite fearless (a rare trait in law students) in terms of his willingness to wade into new topic areas and speak from an analytical perspective, respecting relevant legal principles, rather than just offering off the cuff unsupported curbside opinions. I often referred to Mr. Tso as one of my "ringers," meaning he seemed to have exceptional insight into frequently arcane legal topics. His contributions were always welcome and valuable in terms of moving the class discussion forward.

These achievements were all the more meaningful in the context of remote learning; Mr. Tso's participation and good-natured engagement added an element of human contact that might otherwise have been missing. In short, while I owe him a debt of gratitude for his approach, it is fair to say that his fellow students had a materially better experience because of him.

Mr. Tso's written product was consistently at the top of the class (and this was an exceptionally capable group). I encouraged him to "take risks" in his legal writing and he did so with aplomb. Notable in this regard was his final paper for the Media & Entertainment Law seminar, in which Mr. Tso offered a creative "good faith" solution to the question of how to rationalize the immunity granted by Section 230. His work on shorter, more quotidian assignments, was equally capable, appropriately creative and consistently top-notch.

I believe that all these qualities, combined with his pre-law school professional experience as a city planner, make him a most suitable candidate for a judicial clerkship. I am confident he will be able to execute direction when it is given, and engage respectfully and effectively should he have a viewpoint worth

US\_Active\118531220\V-2

offering to the process. I can speak from experience that Mr. Tso is capable of making such contributions and I was the direct beneficiary of occasions when he did so in the conduct of our class. He will be able to bring to his work not only the letter of the law, but also the social and economic impact that the law has upon contending parties and on society in general.

I offer Mr. Tso my most enthusiastic recommendation.

Sincerely,

  
Samuel Fifer